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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1944.

No. 160

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, A CORPORATION,

Petitioner,

vs.

G. W. BURLEY, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS.

JOHN H. GATELY,
134 South La Salle Street,
Chicago, Illinois,
Counsel for Respondents.

GERALD J. KOPTIK,
Of Counsel.

THE BLAKELY-MARDEN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

SUBJECT INDEX.

	PAGE
Report of Opinion	1
Statement making against the Jurisdiction of this Court	1
Statement of the Case	1
Summary of Argument	7
Argument	10
I. Petitioner's Motion to Dismiss the Complaint and for Summary Judgment was allowed in the Lower Court contrary to law	10
II. The letter of October 28, 1938, could not be considered as a valid release of the individual claims of Respondents	12
a. There was no authority for the execution of any release by the General Chairman	12
b. There was no consideration received by Respondents	17
c. It is self-evident from the contents of the letter that it is not a release of the individual claims of Respondents	19
III. The award of the National Railroad Adjustment Board refusing to give effect to the individual claims of the Respondents herein is not *res judicata* of said individual claims	23
a. The Board had no jurisdiction of the individual Respondent's claims herein because there was no authority vested in C. H. Williams to present the same	23

b. Respondents had no notice of any hearing or of the pendency of any hearing 25

c. The award of the National Railroad Adjustment Board is not final because the statute under which said Board operates specifically excepts money awards from being final 26

IV. The Section of the Railway Labor Act which provides that the award of the Adjustment Board is final and binding, except when the same contains a money award, violates the due process clause of the Fifth Amendment to the Federal Constitution 29

Reply and Conclusion 35-38

TABLE OF CASES CITED.

Ahlquist v. Alaska, etc., 39 Fed. (2d) 348 15

Berryman v. Pullman Co., 48 F. S. 542 36

Burba v. Baltic American Line, 233 Ill. App. 132 25

Burke v. Monumental Div., 273 Fed. 707 16

Burley, et al. v. E. J. & E. Ry. Co., 140 Fed. (2d) 488 11

Campana Corp. v. Harrison, 135 Fed. (2d) 334, 336 11

Consolidated Indemnity Company v. Alliance Company, 68 Fed. (2d) 21 11

Cook v. Des Moines Union Ry. Co., 16 Fed. Supp. 810 34

Donovan v. Travers, 285 Mass. 167, 188 N. E. 705 16

Estes v. Union Terminal Co., 189 Fed. (2d) 768 35-36

Ferryboatmen's Union v. N. W. P. Ry. Co., 84 Fed. (2d) 773 ..... 18, 22

1st Nat'l Bank v. Conway, 94 Fed. (2d) 736, certiorari denied by this court in 58 S. Ct. 1047 11

Griffin v. Chicago Union Station, 13 Fed. Suppl. 722 ... 24
Griffith v. Mass. Mutual Life, 96 Fed. (2d) 57 11
Illinois Central v. Moore, 112 Fed. (2d) 959, 965 ..... 13, 27
In re Henry S. Grove, 22 Fed. (2d) 444 16
Klink v. Chicago R. I. and P. Ry. Company, 219 Fed. 457 11
Lane v. Union Terminal, 12 Fed. Supp. 204 34
Litwin v. Litwin, 30 N. E. (2d) 619, 622 18
McCoy v. St. Joseph Belt Ry. Co., 77 S. W. (2d) 175 ... 14
Monson v. Kill, 144 Ill. 248 25
Moore v. Illinois Central Railroad Co., 312 U. S. 360 ... 37
National Surety v. Ellison, 88 Fed. (2d) 399 11
N. Y. Life Ins. Co. v. Horton, 9 Fed. (2d) 320 25
Nord v. Griffin, 86 Fed. (2d) 481 26
Panhandle Ry. v. Wilson, 55 S. W. (2d) 216 14
Piercy v. Louisville & N. Ry. Co., 248 S. W. 1042 ..... 13, 24
Rentschler v. Missouri Pacific Ry., 253 N. W. 694 29
Smith, et al. v. Texas N. O. R. Co., 118 Fed. (2d) 75 ... 37
Stephenson, et al. v. New Orleans & N. E. Ry. Co., 177 So. 509 ..... 28, 34
System Federation v. Louisiana Ry., 30 Fed. Supp. 909 29
Washington Terminal Co. v. Boswell, 124 F. (2d) 235 .27, 29
Wisconsin and Arkansas Lumber Co. v. Day, 35 Fed. 563 11

STATUTES CITED.

Railway Labor Act, U. S. C. A., Title 45, Section 151 ... 37
Railway Labor Act, U. S. C. A., Title 45, Section 153 ... 25, 27, 29, 35, 37

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BRIEF FOR RESPONDENT.

I.

Report of Opinion.

The opinion of the Circuit Court of Appeals (R. 110-113) is reported in 140 F. 2d 488.

STATEMENT OF THE CASE.

Petitioner, in its Statement of the Case, correctly sets forth the pleadings but fails to accurately inform the Court of the facts of the case. We, therefore, submit the following summary as our Statement of the Case.

This is an action brought by the Respondents to recover damages for a breach of contract by the Petitioner in refusing to permit the Respondents to start work at the designated starting times set out in the "schedule", or agreement, entered into with the Respondents by the Petitioner. The Petitioner filed a motion to dismiss and for summary judgment supported by affidavits. Respondents filed counter-affidavits which controverted several of the pertinent facts set out in the Petitioner's affidavit. Petitioner herein, in its motion to dismiss, set up a plea of release and a plea of *res judicata*. The plea of release was predicated upon a letter signed by the General Chairman and General Secretary of the Brotherhood of Railroad Trainmen, of which the Respondents were members. Respondents contend that the letter was not a release of the personal claims they had against the Petitioner, because the letter was not signed by all of the necessary officials of the Brotherhood of Railroad Trainmen, contrary to the By-laws thereof, of which the Petitioner had knowledge. The further objection to giving effect to the letter was that it was signed without the authority or knowledge of the Respondents. Further, that it could not act as a valid release because there was no consideration therefor, and there was no meeting of the minds of the contracting parties.

The alleged plea of *res judicata* set up a decision of the National Railroad Adjustment Board, which decision was predicated upon claims that had been filed by one of the officials of the Brotherhood, without the authority or knowledge of the Respondents, for the individual claims the Respondents had by reason of the breach of their contract with the Petitioner. This decision was adverse to the Respondents. The "*Board*" found that the letter, aforesaid, which had been pleaded by the Petitioner before the "*Board*", was a release of liability.

Respondents filed a motion to strike the motion of the Petitioner and set out, therein, that there were may issues of fact only triable by a jury.

Respondents contend that the affidavits filed raised opposing questions of fact pertaining to the case and that, therefore, the case should have been tried by a jury rather than determined on a motion for summary judgment.

The Lower Court sustained the motion and entered an order dismissing the complaint.

An appeal was taken to the U. S. Circuit Court of Appeals, Seventh District, and therein certain errors were set forth; being the Court's considering the letter to be a release; that the decision of the "Board" was final; in failing to hold that Section 153-(m) and (p) of the Railway Labor Act was unconstitutional, and in granting the motion for summary judgment.

Prior to July 24, 1934, the Respondents herein had been employed by the Standard Oil Company, Whiting, Indiana, to perform private switching in their yard at Whiting. On July 24, 1934, they entered into an agreement with the Petitioner, through the officials of the Brotherhood of Railroad Trainmen, (which we will subsequently refer to as the B. of R. T.) which agreement or "schedule", as it is called, had been received as Ex. H, of the Petitioner in the United States Circuit Court of Appeals in accordance with its order of July 26, 1941. Article 6 of said "schedule" concerns the starting times when the Respondents herein were to begin work for the various yard crews, the Whiting yard included. Contrary to said agreement, despite the repeated protests of the Respondents, the Petitioner refused to make available switch engines for the Respondents at the times designated in Article 6 of the "schedule". (Ex. H aforesaid.)

Respondents filed many complaints objecting to the refusal to abide by Article 6, with the local officials of the Petitioner and through the local officials of the B. of R. T. with the Petitioner, and time slips were made out (R. 47, par. 10, p. 48, par 13). Subsequently, at a meeting of the B. of R. T., authority was given to the B. of R. T. officials by Respondents, and others working at the Whiting yard, to file a complaint with the National Railroad Adjustment Board to require the Petitioner to comply with Article 6. Thereafter, on November 23, 1936, the same was filed (Doc. 3537, R. p. 14, 15).

The complaint filed with the National Railroad Adjustment Board, hereinafter referred to as the "Board", as aforesaid, was in accordance with the Constitution and By-Laws of the B. of R. T. (Par. 5, 6, and 7, Ex. G, a copy of which had been filed with the United States Circuit Court of Appeals, in accordance with the order entered July 26, 1941), which Exhibit had been offered by the Petitioner herein.

Subsequently, on October 31, 1938, without any notice or authority, and without any consideration to the Respondents, the General Chairman and the Secretary of the B. of R. T. consented, in writing, on a letter executed by the Petitioner, (R. 16-23) to the compromising of 61 separate cases then pending before the National Railroad Adjustment Board. Eleven of these cases involved grievances against the Petitioner herein, including the grievance, being case No. 5 (R. 17). Fifty of the matters contained in said letter involved specific claims for money for eighty five or more individuals, four of which involved personal injury claims (cases nos. 46, 47, 48, 54, R. p. 22). In and by said letter the Petitioner herein agreed in the future to abide by Article 6.

That under rule No. 3 of the Constitution, and general rules of the B. of R. T. (Ex. A, R. 50), the whole general grievance committee could not revise or change a general wage "schedule" or agreement concerning rates of pay, nor working conditions, unless authorized to do so by a majority vote of the lodges, or by a majority vote of the membership in the system. The general grievance committee consists of the General Chairman, the General Secretary and the Local Chairman (Constitution and General Rules of the B. of R. T., Ex. G of the Petitioner heretofore filed, p. 166, par. 7 lines 10-23). These three men did not sign the letter (R. 23). It is signed by C. H. Williams, the General Chairman, and S. F. Johnson, the Secretary.

On May 18, 1939, without any authority or knowledge of the Respondents (R. 44, par. 3-A), General Chairman Williams filed claims for money for the Respondents herein before the "*Board*". Thereafter an award was made thereon denying the same (Ex. F, R. 26-39).

That while said alleged claims of Respondents herein were then pending, the Brotherhood of Firemen and Engineers filed a claim with said "*Board*", involving the identical subject matter of the Respondents herein, and an award was made in the employee's favor by said "*Board*". (R. 52, Ex. B).

Neither Chairman Williams nor Secretary Johnson had any authority from the Respondents herein to waive, or give any release for, any individual claims of the Respondents (R. 49, par. 19). They failed to notify the Respondents and other members of Lodge 281 of their "settlement of claims" (R. 49, par. 20), as required by the By-Laws of the B. of R. T. (R. page 51, rule 81). Respondents contend that Williams, as General Chairman, being one of the signers of the letter of October 28, 1938, aforesaid, did not consider said letter a waiver of the individual claims

of Respondents, for he did not notify Respondents of any settlement in accordance with the rule aforesaid, and a short time after the execution of said letter, without the knowledege of the Respondents, filed the individual claims before the "Board". (R. 26).

SUMMARY OF ARGUMENT.

A summary judgment cannot be rendered where there are contested issues of fact. Respondents maintain that the following were contested issues of fact in the instant cause:

1. Were the officials who executed the purported release, being the letter of October 28, 1938 (R. 16) authorized and empowered to issue any release of the individual claims of the respondents herein.

2. Did said officials of the B. of R. T. act as agents of the Respondents herein in filing any individual claims with the National Railroad Adjustment Board.

3. Was there a meeting of the minds of the respective parties who signed the letter, as required by law of contracts, so that the letter of October 28, 1938, could be considered a valid contract. The position of the Respondents being that there was no meeting of the minds on any release of individual claims of Respondents herein, because shortly thereafter, Williams, one of the signers, filed claims for time with the Railroad Adjustment Board.

These questions of fact were controverted, and under the law must necessarily be submitted to a jury for decision. Therefore, the allowance of the motion for summary judgment was in error.

If Williams and Johnson, the officials of the B. of R. T., were not authorized under the By-laws of the B. of R. T., nor specifically, by these Respondents, to sign a release for their individual claims, and there is no presumption in law that they could so act as their agents, then the letter of October 28, 1938, (R. 16) could not, and should

not, be considered as a valid release of the individual claims of the Respondents herein.

The officials of a union do not have authority *ipso facto* to waive, nor release, the individual rights of the members of the Union.

The so called release pleaded by the Petitioner herein, being the letter of October 28, 1938, (R. 16) could not be considered a valid release of itself because of lack of authority in the signers to represent the Respondents herein. There was no consideration received by the Respondents to support a release. The letter itself by its terms does not purport to be a release of the individual claims of the Respondents, but rather refers to the claims for money on other claims therein set forth.

The award, pleaded by the Petitioner herein, of the National Railroad Adjustment Board, denying the individual claims of the Respondents herein to damages, by reason of the Petitioner's breach of Article 6, cannot be considered as *res judicata* of the Respondents' claims.

The "Board" lacked jurisdiction over these Respondents in the case as pleaded by the Petitioner herein. First, because the claims were filed by Williams without authority or knowledge of the Respondents herein (R. 48, par. 14, 15, 16). Second, because there was no notice of any hearing or the pendency of the hearing given to the Respondents herein. (R. 48, par. 17).

Section 153 (M) and (P) of the National Railway Labor Act must be held unconstitutional as controvening the Fifth Amendment to the Federal Constitution as being a violation of due process of law. The employer or carrier under the Act is given a right of review in the event the decision of the "Board" is against it. After an order is entered by the "Board", requiring the carrier to perform

any act, it may refuse to do so, and the remedy of the employee is the filing of a suit in the District Court based upon the award. The ensuing trial is a trial *de novo*. Thereby the carrier obtains a review of the award.

If the employee is unsuccessful before the "Board", its decision is against him, he has no redress.

We submit that such a procedure is unconstitutional.

ARGUMENT.

I.

Petitioner's motion to dismiss the complaint and for summary judgment was allowed in the lower court contrary to law.

Petitioner herein has adroitly evaded, in its points, the compelling fact decided by the United States Circuit Court of Appeals herein, namely, that in order for any court, or board, to render any binding decision, it must have jurisdiction of the parties. We maintain, in the instant case, that the "award" of the National Railroad Adjustment Board, pleaded by Petitioner herein as *res judicata*, is void for want of jurisdiction of the parties.

The Affidavits and Counter Affidavits (R. 11, 46, 61) filed in this cause in connection with the Motion for Summary Judgment and the Motion to Dismiss, presented controverted issues of fact. A Jury Trial had been requested at the filing of the suit. Therefore, the court was not empowered, nor authorized, to pass upon these facts on the hearing of a Motion for Summary Judgment, as the United States Circuit Court of Appeals finds, in its decision (R. 112). The main controverted facts were:

1. The question of authority of Williams, as Chairman, and Johnson, as Secretary, of the B. of R. T., as set out in the Counter Affidavit on the Motion to Dismiss (R. 45, Par. 11, 14, 15, 16, 19), to compromise any claims with the Petitioner, when they were only empowered to file a grievance to compel the Petitioner herein to abide by the terms of Article 6;

2. Whether or not Williams had authority to file any personal claims of the Respondents with the National Railroad Adjustment Board.

3. Whether or not there was a "meeting of the minds" between Williams and Johnson and the Petitioner in the letter of October 28, 1938 (R. 16), pleaded by the Petitioner as a release.

4. Whether a contract is supported by sufficient consideration is a question of fact and should be submitted to the jury.

We submit that all of the decisive cases on the point concur, in the enunciation of the law, that where there are contested issues of material facts, the court should not dispose of a case on a Motion for Summary Judgment, and that the only time a Motion for a Summary Judgment may be allowed is when the same is sustained by undisputed facts.

Consolidated Indemnity Company v. *Alliance Company*, 68 Fed. (2d) 21.

Klink v. *Chicago R. I. and P. Ry. Company*, 219 Fed. 457.

National Surety v. *Ellison*, 88 Fed. (2d) 399.

1st Nat'l. Bank v. *Conway*, 94 Fed. (2d) 736, certiorari denied by this court in 58 S. Ct. 1047.

Griffith v. *Mass. Mutual Life*, 96 Fed. (2d) 57.

Campand Corp. v. *Harrison*, 135 Fed. (2d) 334, 336.

Burley, et al. v. *E. J. & E. Ry. Co.*, 140 Fed. (2d) 488.

It is a fundamental principle of law, that in nearly all instances, the question of an agent's authority is a question of fact and should be passed upon by a jury.

In *Wisconsin and Arkansas Lumber Co.* v. *Day*, 35 Fed. 563 at 566, the Court said:

"Ordinarily the question of whether an agent has apparent authority to act for his principal is a question for the jury, when the contract is not in writing.

This is but an application of the rule that even though the facts are undisputed, if different inferences may be reasonably drawn from these facts, the question is for the jury."

II.

The letter of October 28, 1938 could not be considered as a valid release of the individual claims of respondents.

(a) There was no authority for the execution of any release by the General Chairman.

General Chairman Williams, under the Constitution of the By-Laws of the B. of R. T., has limited power and authority, his duties and obligations are set out in the B. of R. T. Constitution (Exhibit "G" filed with the court under order of July 26, 1941, p. 166, par. 7). Among his duties is the filing of grievances or claims for, and on behalf of, members or groups or lodges or all of the lodges of the particular roads of the B. of R. T. In order for him to receive a grievance for handling it is necessary that the local lodge hear and determine the matter and after passing upon the same submit it to him for handling. The General Grievance Committee consisting of the General and Local Chairman of the Lodge, and the General Secretary consults with the General Superintendent of the System. After this Committee makes any settlement it is required that within 30 days they notify the Secretary of the Lodge where the Grievance originated, and the member or members affected thereby of such action in writing (B. of R. T. Constitution, p. 168, par. 8½). The Petitioner herein was well acquainted with this procedure and the rules and regulations of the Brotherhood, for it was the Petitioner herein who introduced the B. of R. T. Constitution as an Exhibit.

We respectfully submit that on the original grievance

filed with the Board (Case No. 3537, R. 13) the aforesaid procedure had purportedly been adhered to up to the point of the settlement claimed by the Petitioner. However, as will be noted by Petitioner's Ex. C (R. 16), the same was executed by C. H. Williams, as General Chairman, and S. F. Johnson, Secretary, but there is no signature of the Local Chairman as heretofore shown to be required.

As stated in the Affidavit of the Respondents, filed herein (R. 45, par. 14, 15 and 16), the only authority vested in Williams as General Chairman was to present a Complaint to the "Board" to comply with Article 6 by furnishing engines and work at the times therein specified.

The officers of the B. of R. T. have no authority to waive private rights. As this Court has confirmed in *Illinois Central* v. *Moore*, 112 Fed. (2d) 959 (reversed by the Supreme Court on other grounds, 61 S. Ct. 754 at page 965), the United States Circuit Court of Appeals stated:

> "The collective agreement as such is made, defended and changed by the union, but the rights of each employee under it *are his own* and he may waive or assert them himself as he sees fit." (Italics ours.)

And at page 966 held:

> "The seniority provision of a collective agreement is an important and valuable part of the individual contracts of employment made thereunder. It has been held the union cannot waive or destroy it."

In the case of *Pierce* v. *Louisville & N. Ry. Co.*, 248 S. W. 1042, the court stated, p. 1045:

> "The officers of such organizations (order of railroad conductors union) are, as to the individual rights of its members, not to be deemed as their agents—agreements between organizations between employees and their employer, and designated primarily for the individual benefit of the members of the organization, *and not to place it within the power of the organization to change or modify the contract at its pleasure, so as*

to affect the individual rights of its members theretofore secured by the agreement.

"If the right of seniority may be changed or waived or otherwise dispensed with by the act of a bare majority of an organization, to which the one entitled thereto is a member, it would be building upon a flimsy foundation of sand, which might slip from under him at any time by the arbitrary action of the members, possibly to serve their own selfish ends in displacing him.

"* * * his agreement did not contemplate the submission by him to that body of the determination of any question involving his personal rights. But here *we have a personal right acquired by him as against the railroad company under contract, and we have the Order of Railroad Conductors asserting the right to waive for him the benefits of that contract.* It could not have been in contemplation by a member of such organization that he agreed when he entered to submit to the order for decision a controversy involving his rights as against a third party." (Italics ours.)

In the case of *Panhandle Ry.* v. *Wilson*, 55 S. W. (2d) 216, p. 219, conversely to the instant case the court stated:

"The rule is that individual members of a labor union are not bound by the contract between the union and the employers unless such agreements are ratified by the members of the union as individuals, and that in the absence of evidence of such ratification by a member, no rights accrue to him which he can enforce against the employer."

We submit that no rights of the members can be alienated without the member's consent, as the "Board" and lower Court did in the instant case.

We believe the case of *McCoy* v. *St. Joseph Belt Ry. Co.*, 77 S. W. (2d) 175, to be impelling in the instant case where the court states at p. 178:

"The evidence in plaintiff's favor is further to the effect that without any authority from the men, he

sought to change the seniority rights and positions of the employees of defendant, over their objections, including plaintiff.

"The evidence, in plaintiff's favor is further to the effect that it was never agreed by the committee either to consolidate the lists or to change any working arrangements, nor was any vote taken on these matters, and the matters stated as agreed to in the letter above mentioned were not agreed to at all. In fact, no notice was given to the men's committee or to plaintiff of the change, other than the posting of the notice in the yards as aforesaid.

"Nor is there evidence that defendant's manager ever secured from the committee of defendant's employees, either orally or in writing, consent that the seniorities of defendant's employees might be changed to conform to the consolidated list, nor that such an agreement was made with defendant's employees either individually or as a group.

"There is nothing in the record from which it can be inferred that he individually participated in the making of the contract, or that he thereafter ratified it."

Page 182:

"The evidence in behalf of the latter sufficiently tends to show, and to authorize the jury to believe, if they did, that *what McQuaid did in composing the consolidated seniority list was merely his own unauthorized act without consulting those empowered to make such change, and defendant acted upon his said unauthorized act and made no investigation of his authority, nor made any effort to repair what was done when it learned the true fact about the matter.* But even if he did, *there is no evidence of any authority in the B. of R. T. to change or modify the contract so as to affect the individual rights of a member which rights were theretofore secured by the contract.*" (Our italics.)

See also the case of *Ahlquist* v. *Alaska, etc.*, 39 Fed. (2d) 348.

Certainly, a right to damages is as valuable a right as a seniority right, and we believe the court should not fail to follow these decisions in holding that a union, nor its officials, cannot waive or destroy it.

To hold otherwise would subject the millions of members of the various unions throughout the country to the whim or fancy and dishonesty of their officials and make uncontrollable dictators of them. We sincerely believe that such is not the intent nor the purpose of the union movement in this country, nor is it the intent or purpose of the courts of this country to so clothe them with such authority.

We also submit the case of the *Henry S. Grove*, 22 Fed. (2nd) 444, at page 446, paragraph 5 thereof, wherein the Court in passing upon an analogous situation to the instant case said:

> "Courts should frown upon any attempt made by employers of large numbers of laboring men to curtail their legal remedies and shut them off summarily from access to the courts, in the absence of a showing of complete mutuality. Large corporations, and especially insurance companies, are often too prone to take advantage of a situation, difficult even for the technician to understand."

We believe this last phrase is particularly pertinent to the facts in the instant case. See also *Burke* v. *Monumental Div.*, 273 Fed. 707.

If the so-called compromise agreement of the Petitioner—and we repeat, the Petitioner—which was drafted by them, was entered into without authority by the parties supposedly representing the Respondents herein, then it was invalid, and in that event the individual rights or claims of the Respondents cannot be lost thereby.

In Sub-Point E of Point II of Petitioner's brief they cite *Donovan* v. *Travers*, 285 Mass. 167, 188 N. E. 705, in which the Court states:

> "It is settled law that members of an unincorporated

> voluntary association, like the Brotherhood, are bound by the determination of the association's tribunal *if the decision is reached after observance of the formalities it prescribes*, after fair opportunity of presenting their case, *where there has been no excess of jurisdiction*, no bad faith or capricious, unreasonable or arbitrary action." (Italics ours.)

which we respectfully submit is the exact status of the instant case, and we wish to emphasize at this point that nowhere in counsel's brief has he answered our previous contention that the two officials of the Brotherhood did not act officially, for they failed to comply with the rules and constitution of the Brotherhood.

We believe the instant case is on all fours with the quoted opinions and that, in right and justice, they should be followed by this court in affirming the order of the United States Circuit Court of Appeals herein.

(b) There was no consideration received by respondents.

There was no consideration of any kind passed between the Petitioner and the Respondents for the execution of a release (as contended by Petitioner in the letter of October 28, 1938). We believe this is self-evident from an examination of Petitioner's Ex. "C" (R. 16) Case No. 5 thereof. The only thing that was presented by the Local Lodge to Williams, the General Chairman of the Grievance Committee, and to the "Board" was "starting time of switch engines of Whiting S. O. Yard" as set forth in the letter. (R. 17.)

This controversy was settled by the parties by the following (R. 17):

> "Settlement by agreement that the starting times for a 90 day trial period commencing November 15, 1938, shall be the times provided for in Article 6 of the Yardmen's Agreement instead of starting times heretofore agreed upon and now being followed. * * *"

There was no release of any individual claims of these Respondents and no consideration passed to these Respondents for any release, as no claims of these Respondents were presented, argued nor settled by the letter of October 28, 1938.

The "Board," in considering the unauthorized claims that Williams presented to them, considered this letter as a release of the individual claims of the Respondents herein, and we submit that the "Board" by so doing committed a grievous error and therein made the refusal of the award invalid.

Petitioner herein, has not, and we believe cannot ask this court to believe that the agreement to abide by the terms of Article 6, can be considered as a consideration in settlement of Respondent's individual claims, because the law is well settled that an agreement to do something, which a person is already legally bound to do, is not a sufficient consideration to support any agreement.

As was stated in an Illinois decision *Litwin* v. *Litwin*, 30 N. E. (2d) 619, at page 622:

> "* * * promising to do what she was already bound to do (referring to a consideration). A promise of that kind was not a sufficient consideration for the assignment."

In the case of *Ferryboatmen's Union of California* v. *N. W. P. Ry.*, 84 Fed. (2d) 773, the court there held that something a party is required to do is not a sufficient consideration to support a release. This decision also held that there must be a meeting of the minds of the parties to the agreement.

We respectfully submit that in the instant case there was no meeting of the minds. This is evidenced by the subsequent unauthorized filing of claims purportedly on behalf of these Respondents before the National Railroad Ad-

justment Board, by Williams. The same Williams who signed Exhibit "C" (R. 16), set up by the Petitioner as a release. He filed the individual claims for Respondents herein, unauthorized it is true, but we refer to it, to show that he himself, had not considered the letter a release of individual claims, thereby exemplifying the absence of a meeting of the minds, as exemplified by Williams' statement of claim (R. 29), filed with the "Board":

> "There were no agreements reached whereby payment for violation of Article No. 6 of the Yardmen's Agreement would be waived as a result of withdrawal of Labor Board Docket No. 3537. *In fact that case held no claim for payment for time.* It was simply a case to settle the dispute as to the carrier's right to force the yard crews in the Whiting yard to work at times other than the fixed starting time provided for in Article 6. Certainly there are no words in the agreement reached which implies in any manner that the committee waived the right to claim for payment for violations prior to withdrawal of the case from the Board." (Italics ours.)

(c) It is self-evident from the contents of the letter that it is not a release of the individual claims of respondents.

From an examination of said letter (R. 16), as a whole, it is obvious that there were many cases pending involving the payment of money, but the only question these Respondents had pending on Case No. 5 (R. p. 17) was a grievance—"starting time of switch engines in Whiting S. O. Yard." (R. 17, case 5.)

The question of liability of the Petitioner for the payment of money on individual claims of these Respondents and others, was not presented in Labor Board Docket No. 3537, was not set out in the letter (R. p. 17), nor by any wording in the letter attributable to Case No. 5.

This court is too well aware of the multitude of cases holding that the wording of a contract or a pleading is held most strongly against the person drafting the same. We submit that the Petitioner herein drafted the letter (Ex. "C") (R. 16), and that if it had intended that said letter should act as a release of the individual claims of the Respondents herein, assuredly with the legal talent at their disposal, they could, and would, have clearly expressed that thought in clear, legal, understandable language.

From an examination of the letter we find that it enumerates 61 separate cases then pending before the National Labor Adjustment Board, between the Brotherhood of Railroad Trainmen, represented by C. H. Williams as Chairman and one of the other members of the Grievance Committee, and the Petitioners herein. Eleven of these cases involved grievances, including Grievance Case No. 5. Fifty involved claims for money for eighty-five or more individuals. Of these fifty, four involved personal injury claims. (Cases Nos. 46, 47, 48 and 54, R. 16.) All the others were time claims.

After examining all of these claims, it is evident that the wording of the concluding part of the letter could only adjust and compromise the *claims* then pending before the Board and submitted for settlement or compromise. We repeat, that the only thing pending before the Board as contained in said letter affecting these Respondents was a grievance, namely, to compel the Petitioner herein to abide by the terms of Article 6 of the agreement. (R. 14, Doc. No. 3537.) The question of liability of the Petitioner for the payment of individual claims to some of the Respondents herein was not presented to the "Board," enumerated in Case No. 5, discussed by the parties, mentioned in the letter specifically, nor by inference.

The fact that no one considered this letter as a release

of individual claims, we believe is evidenced by Williams a short time thereafter (R. p. 26) filing the unauthorized claims before the "Board," this, several months after the letter of October 31, and without the required authority of the local lodge, nor the Respondents, and without their knowledge.

We submit that it is self-evident that "claims" refer to claims for money, Ex. B (R. 15), as distinguished from "protests" or grievances as understood in the trade, and we therefore respectfully submit that neither the B. of R. T., nor the officials thereof, had the power or the right to compromise or waive any individual claims of the Respondents herein. The Petitioner was aware of the limited authority of Williams as Chairman of the B. of R. T., yet it interposed the letter as a release, when for the reasons heretofore stated there was no authority vested in Williams and Johnson to execute the same; the purported release was not executed by the three men required by the By-Laws of the B. of R. T.; there was no consideration to the Respondents, and the letter itself, from its contents does not purport to be a release of claims of these Respondents.

For this letter of October 28, 1938, to be a valid and substantial release of the claims of the Respondents herein, it is legally necessary that the following be present.

1. That there be competent parties.

We submit that we have shown the lack of authority in Williams and Johnson to act for or on behalf of the Respondent's individual claims. They were not the properly constituted committee provided for the purpose, by the B. of R. T.

2. There must be a proper subject matter.

We believe it is obvious that in the wording of the letter that the only matter pending between the parties and

before the "Board" was the grievance to compel the railroad, Petitioner herein, to abide by Article 6 of the Agreement. That subject matter cannot be transmuted to include the personal claims of these Respondents. There is therefore no proper subject matter.

3. Consent, or a meeting of the minds of the parties.

We believe we have illustrated that Williams himself, one of the parties to the Agreement, did not consider the letter a release of individual claims.

4. There must be a consideration.

Even the Petitioner, in the lower court, did not suggest that there was any consideration moving to these Respondents, from the Petitioner to validate the would be release. (See *Ferryboatmen's Union* v. *N. W. P. Ry. Co.*; 84 Fed (2d) 773.)

Petitioner herein seeks to overcome all of the legal requirements of a well ordered and law abiding society, by its all embracing "collective bargaining"; such was not the intent nor purpose of unionism in America. And we respectfully submit that collective bargaining consists of obtaining rights, good working conditions, fair wages and just consideration for its members by the Unions, rather than the overriding of all legal precedent and the forfeiting of the members' individual rights.

III.

The award of the National Railroad Adjustment Board refusing to give effect to the individual claims of the Respondents herein is not res judicata of said individual claims.

(a) The Board had no jurisdiction of the individual Respondent's claims herein because there was no authority vested in C. H. Williams to present the same.

As stated in the affidavit (R. 45) the only authority vested in the General Grievance Committee, of which C. H. Williams was Chairman, was to present a grievance to the "Board" to force the Petitioner to comply with Article 6 (R. pp. 47, 48, paragraphs 11, 13, 14, 15, 16 and 19).

As heretofore enumerated under Point II (a), under the Constitution and By-Laws of the B. of R. T. of which the Petitioner had knowledge, the General Grievance Committee and the General Chairman have limited authority. The cases and argument quoted under that point are applicable to the instant point, so we will not burden the court with a repetition thereof. However, we wish to state that under Rule 5 (Exhibit "G" heretofore filed herein under order of July 26, 1941) certain steps are necessary before any grievance or claim can reach the General Chairman, which was not done in the case decided by the National Railroad Adjustment Board upon which the Petitioner has pleaded *res judicata* (R. p. 26).

Certainly, a switchman, uneducated in the ways of law, releases, and authority, should not be held to have any greater power than an attorney at law, who is supposedly more learned in reference to rights and liabilities, and this court we believe without any citation being necessary will agree that an attorney without authority and without the

knowledge or consent of a client could not file a suit in his behalf and bind the client thereby.

We submit that in the instant case, the General Chairman C. H. Williams who took it upon himself to file individual claims for these Respondents without their knowledge or authority, cannot be held by that action to bind them.

If Williams did not have the authority to file the claim, then it must necessarily follow that the "Board" did not have jurisdiction of the claims nor of the parties. If they did not have jurisdiction then any order or award or refusal of award that might be entered by them would be void.

In the case of *Piercy* v. *Louisville Railway*, 248 S. W. 1042, the court held at page 1045:

> "The officers of such organizations (union) are, as to the individual rights of its members not to be deemed as their agents."

We wish to reiterate that the authority given to the representatives under the Act and under the constitution of the Brotherhood does not anywhere include the right to representation for "claims for pay or claims for breach of contract," but, on the contrary, only disputes concerning rates of pay, rules or working conditions.

We wish to submit the consensus of authority on this point as evidenced by 63 Corpus Juris, page 663, Par. 14:

> "A trade union is not the agent of a member for the purpose of waiving any personal right he may have, but only for the limited purpose of securing for him, together with all other members, the objects of the union."

The lower court, before whom this case was decided, previously held in the case of *Griffin* v. *Chicago Union Station*, 13 Fed. Supp. 722, p. 724, upon a claim that the member was represented before the "Board" by the Union; that

such was not the fact, that no notice had been given the complaining member as to his individual rights, and that those rights could not be waived or impaired by the action of the Union officials before the "Board." The same legal principle should have been applied in the instant case.

The Respondents do not deny that the officials of the Brotherhood were authorized to file a complaint before the "Board" to compel the Petitioner to adhere to Article 6 of its labor agreement. The officials' authority was limited to this act and purpose. The agency created was a limited or specific agency and was to be terminated as soon as the purpose for which the agency was created was served. The Petitioner apparently fails to realize that the authority which was conferred upon the aforesaid officials by the Respondents concerned the "specific performance" of Article 6 of the labor agreement and did not concern the individual rights of the various Respondents, the said individual rights of the Respondents arising out of the breach of the labor agreement by the Petitioner.

It is a well established legal principle that an agent who is appointed for a particular purpose is a special agent and his authority must be strictly construed and must be measured by express direction given by the principle. A person who deals with a special agent is ordinarily bound to ascertain the scope and extent of the special agent's express authority. See *N. Y. Life Ins. Co.* v. *Horton*, 9 Fed. (2nd) 320; *Monson* v. *Kill*, 144 Ill. 248; *Burba* v. *Baltic American Line*, 233 Ill. App. 132

(b) Respondents had no notice of any hearing nor of the pendency of any hearing.

As specifically set out in the U. S. C. A. 45 par. 153 (j),

> "Parties may be heard either in person, by counsel, or by other representatives, as they may respectfully elect, and the several divisions of the Adjustment

Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to th m."

We respectfully submit that the statute is mandatory upon the "Board" to give notice of all hearings to the employee involved in any dispute before them.

Nord v. *Griffin*, 86 Fed. (2d) 481, involves seniority rights which had been denied by the decision of the "Board", because of the unauthorized action of the Brotherhood in the presentation of the case. The Court held that by reason of lack of notice of the hearing, the employee was not accorded due process of law as guaranteed by the Fifth Amendment to the Constitution and, therefore, the order of the "Board" was void.

We respectfully submit that the instant case is in this respect analogous to the decision in the Nord case and that, therefore, the denial of the award by the "Board" in the instant case is void for lack of notice to these Respondents. (R. 48, par. 17, 18.) This fact is uncontroverted yet the Petitioner evades the same in their brief and seeks to gloss over it by the statement that "collective bargaining" justifies disregarding thereof, and states that the notice to the Union representative is sufficient.

(c) The award of the National Railroad Adjustment Board is not final because the statute under which said Board operates specifically excepts money awards from being final.

Even if these Respondents had given authority to the General Grievance Committee to file individual claims for them before the National Railroad Adjustment Board, and even though they had notice and knowledge of the pendency of said hearing, the award would still not be final. As our authority for said statement we submit that the Statute un-

der which said "Board" operates (U. S. Code Ann., Title 45, par. 153, sub-par. M) states:

> "and the award shall be binding upon both parties to the dispute except insofar as they shall contain a money award."

Petitioner construes this clause literally and submits to the court the proposition that unless an employee is actually awarded a cash sum by the Adjustment Board, the findings of said "Board" are final and binding and the employee has no right of review. We submit that the word "contain" as used in the statute actually means "concern," and that the statute should be construed to read, that the awards shall be final and binding, "except insofar as they shall *concern* a money award."

If Petitioner's contention is correct, it would mean that an employee who had petitioned the "Board" for a money award and who was unsuccessful in obtaining such an award, could not have the ruling of the "Board" reviewed. According to the reasoning in *Washington Terminal* v. *Boswell*, 124 F. (2d) 235, this is a violation of due process and the statute would be unconstitutional.

This Court is undoubtedly well familiar with the rule that if a statute is capable of two constructions, the courts will adopt a construction that will make the statute constitutional and valid. Therefore, we submit that our suggested construction of the statute should be adopted and followed.

Certainly, the award asked for by Williams was a money award, and though it was not awarded, it "contained" or "concerned" a money award.

As was stated in the case of *Illinois Central* v. *Moore*, 112 Fed. (2d) 959, at page 966 (reversed on other grounds, 61 S. Ct. 754):

> "The individual on his individual contract of em-

> ployment may seek reinstatement with pay through the railroad officers on through the Board, or he may, *before or after* pursue those remedies, acquiesce in the discharge, and ask damages for a breach of contract at law." (Italics ours.)

The court stated also in that case (p. 964), in referring to the handling of grievances or claims—

> "and then may be referred to the Adjustment Board. Awards are final except as to a money award." (Citing authorities.)

In the case of *Stephenson, et al.* v. *New Orleans & N. E. Ry. Co.*, 177 So. 509, wherein an award of the "Board" was pleaded as a defense, as in the instant case, the court said, p. 517:

> "Congress did not empower the Board to impair the obligations of an existing contract or to disturb the harmonious relations existing between a carrier and its employees."

It further states, p. 519:

> "Then most assuredly the employees of a carrier against whose interest and seniority rights an award has been made are not left without remedy in all the courts of the land."

And in commenting on the right of an employee to go to a court for relief despite an adverse decision by the "Board," the court states, p. 519:

> "Such an employee who has lost his cause before the Board must necessarily resort to a state court of competent jurisdiction or lose the property rights involved in a seniority contract with his employer, unless other Federal grounds are present."

We submit that in the instant case other Federal grounds were present, and we have appealed to the Federal Court for the assertion of a private right that could not be revoked by the adverse decision of the National Railroad Adjustment Board.

To the same effect see also:

System Federation v. *La. Ry.*, 119 Fed. (2d) 509.

See also:

Rentschler v. *Missouri Pacific Ry.*, 253 N. W. 694.

IV.

The Section of the Railway Labor Act Which Provides That the Award of the Adjustment Board Is Final and Binding, Except When the Same Contains a Money Award, Violates the Due Process Clause of the Fifth Amendment to the Federal Constitution

We wish to respectfully point out to the court that under the Act under which the National Railroad Adjustment Board functions (U. S. Code Ann., Title 45, par. 153), when an award is entered against the employer and he refuses to comply therewith, it is necessary for the employee to file a suit at law, which is a trial *de novo*. The employer in that suit may set up any defense that he chooses, and in effect, obtain a review of the decision of the "Board."

If, however, the employer is successful before the "Board", and the award is entered against the employee, if said award is to be held a final adjudication of the rights of the party then there is no further remedy afforded to the employee.

This situation affords the employer a right of review of the decision of the "Board", and refuses the same right of review to the employee. We respectfully submit that this inequality violates the due process clause of the Fifth Amendment to the Constitution of the United States.

In the case of *Washington Terminal Co.* v. *Boswell*, 124 Fed. (2d) 235, on page 244, the court said:

> "Though the effects of an award favorable to an employee are substantial, they do not conclude the employer's rights."

"The Board cannot enforce its awards. That is left for the courts to do. It can be done only in a suit *de novo*. In the suit the cause of action is upon the award, to secure its enforcement. But the parties are not limited by its provisions in the trial. The employee must set forth "the causes for which he claims relief" and the Board's order. 45 U. S. C. A. Sec. 153, First (p). The suit must "proceed in all respects as other civil suits," except that the order and findings "shall be prima facie evidence of the facts therein stated." Ibid. The carrier is limited in no way as to its defenses or the evidence it may wish to present. Its day in court in the enforcement suit is a full one . . . The short answer, therefore, to the argument that the administrative proceeding is wanting in due process is that, if so, this is entirely immaterial. Any failure in this respect is cured by the full and complete opportunity which the carrier is given in the enforcement suit to make its defense under all procedural and substantive guaranties of the Constitution."

This quotation unequivocally illustrates that an adverse decision by the "Board" does not conclude the employer's rights. On the other hand, however, an adverse decision by the "Board" against the employee does conclude the employee's rights.

On page 245, of the *Boswell* case, the court states,

"If the statute creates inequality in this respect, it is perhaps the other way. When an award is unfavorable to an employee, the statute makes no provision for him to challenge it by suit to set it aside or otherwise. So far as appears from the Act's explicit terms, the Board's decision is final. We need not determine whether the statute is conclusive in this respect or, if so, whether it would be so far invalid. In other words, the question is not before us whether an employee can maintain a suit for relief independent of the statute and of the award, after he has submitted

his case to the Board and received its adverse decision. That the statute, if applied literally in this respect, might be invalid as to the employee and that he might, therefore, have independent relief, does not mean that it would be invalid as to the carrier or that it should have such relief from the Board's adverse decision. Their situations are entirely different and so are the effects upon their rights of the award and of absence of opportunity to institute suit to review it. The employee's rights would be foreclosed, if the award against him were final. The employer's position, on the other hand, is much different."

On page 246, the court said,

"And in this lies a stronger answer. It is the fact that unless the employee institutes an enforcement suit, the carrier cannot be prejudiced in any legal sense by the absence of an opportunity to sue. The only purpose of such suit would be to set aside or nullify the award. But this is not necessary for adequate protection of the carrier's rights. The award is not self-enforcing or enforceable by the Board. It is merely a decision that the carrier should change its operating practice in the manner specified. It has the power of management and if it regards the award as contrary to its rights, it can maintain the existing practices. The act confers upon the employer the powerful advantage of the defensive position in regards to the award. It places the burden of enforcement upon the employee. It limits the time within which he may act. The period allowed is not unreasonable. If he does not act within it, presumably his right to do so is gone. If not, he loses at any rate the special advantages of the statutory suit."

This quotation clearly illustrates the respective positions of a losing employer and a losing employee before the Adjustment Board. If there is an award against the employee by the Adjustment Board, he can, for all practical purposes, disregard the same because it is of no effect

whatsoever as far as he is concerned. On the other hand, if the "Board" makes any finding against the employee, the adverse ruling of the "Board" may constitute a complete destruction of the employees property rights.

On page 246, the court said, in speaking of the carrier's rights,

> "In all this there is no essential unfairness. Certainly, there is none beyond the power of Congress to create in the regulation of such complex economic matters. The carrier is at full liberty to accept and comply with the award, or to reject and disregard it. If he chooses the latter course, the award has no effect upon its rights unless the employee institutes and succeeds in a suit to enforce it. If he does so, the carrier receives full constitutional protection in the suit."

In most instances, when a finding of the "Board", is against the employee, the latter loses certain property rights, and at the same time certain rights are given to the employer which he did not have prior to the decision or finding of the "Board". The employee has but one alternative, to accept the award of the "Board". On the other hand, if there is a decision against the employer, he has the choice of either accepting the award of the "Board" or rejecting the same. He does not have to comply with the award unless the employee files a suit in Court, predicated on such an award, and obtains the sanction of the Court. In other words, in the absence of any suit by the employee to enforce an award of the "Board" which is adverse to the employer, such award is absolutely meaningless. The statute denies the employee the more usual advantages of administrative decision, namely, immediate effectiveness, unless stay is secured, limitation of judicial review to questions of law, enforcement by public authority, etc. It gives him only decision, not action, by the "Board".

It puts upon him the whole burden of enforcement. If the employer has had his day before the "Board", and after it has lost, he is only confronted by an order, non-enforceable, except by suit. In fact, the employer is not only not denied his day in court, in the hearing before the "Board", but he is given another opportunity to have his day in court in the suit brought to enforce the award.

On page 251, the court said:

> "Finally, this is a suit for a declaratory judgment. The remedy is discretionary. We do not believe a carrier, consistently with the Railway Labor Act, could maintain a suit in equity to set aside an award or enjoin its enforcement. The statute seems clearly to exclude such suits by specifying enforcement suits solely as a *method of review*." (Italics ours.)

In the dissenting opinion of Justice Stephens, on page 269, the following statement is found:

> "It would seem more logical to conclude that it would hardly have been the intention of Congress to exclude either the employees or the carrier from recourse to the courts for a determination of their contract rights, whether or not they lost before the Board. Indeed, the argument that the carrier can not have recourse to the Courts because employees losing before the Board cannot sue either under the Act or at all begs the very question in issue, to wit, whether the procedure provided for by the Labor Act is exclusive."

The decision in the *Boswell* case was sustained by this Court by an evenly divided opinion, Justice Rutledge not taking any part in the rendition of the opinion. This, we submit, should be indicative of the Court's attitude in the instant case. Despite the fact that the Railway Labor Act does give the employer the right of review (enforcement suit), four of the Justices of the Supreme Court felt that he should be given an additional or a more direct

right of review of the "Board's" award. Since this is the fact, we may reasonably conclude that the court should certainly favor the employees in the instant cause, who are not given any right of review whatsoever, by the Act in question.

This feeling about the unfairness of the Act to the employee is concurred in, in the case of *Stephenson* v. *New Orleans & N. E. Ry. Co.*, 177 So. 509, at page 519:

> "Neither the carrier nor the employee against whose interest an award has been made, is given any right under the Act to go into the United States District Court as a party plaintiff or complainant."

Also, the District Court in the case of *Lane* v. *Union Terminal*, 12 Fed. Supp. 204, at page 205, states:

> "The act is silent, insofar as authority is concerned, for any person to enter the national court, save and except the 'petitioner' or 'any person for whose benefit such award was made'. The defeated had no right to enter court. He is given no privilege of court review. It must be assumed that the right of the court to 'enforce the order or set aside the order' will be taken upon the application only of the parties who are permitted to enter court."

To the same effect, see also, *Cook* v. *Des Moines Union Ry. Co.*, 16 Fed. Supp. 810.

REPLY TO BRIEF OF PETITIONER.

We have shown that if it is found that the award of the "Board" denying the claims of the Respondents is final, then Sections 153 (m) and (p) of the Railway Labor Act are unconstitutional. (Brief.)

On page 15 of its brief, Petitioner states that "Notice to the duly constituted officers of the Brotherhood is sufficient," and cite *Estes* v. *Union Terminal Co.*, 189 Fed. (2d) 768, in support of their statement.

Section 153 (j) of the Railway Labor Act provides:

> "Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board *shall give due notice of all hearings to the employee or employees and the carrier or carriers* involved in any disputes submitted to them." (Italics ours.)

In *Estes* v. *Union Terminal Co.*, *supra*, the Circuit Court of Appeals stated that it is absolutely imperative that an employee involved in any controversy before the "Board" be given notice of the hearing, and that in cases involving two large groups of employees, notice to the duly constituted officers of the organization would *generally* be sufficient. The case at bar does not involve large organizations of employees. The Court in stressing the importance of giving notice to an employee of a hearing before the "Board," stated:

> "* * * illustrates how a single employee may be caught between the upper and nether mill stones in a controversy to which only a labor organization and a carrier are parties before the board."

The *Estes* case does not lay down the positive rule of law that the serving of notice upon officials of a union is sufficient compliance with the terms of the Railway Labor Act as the Petitioner would have us believe. In fact, if any inference is to be drawn from the case, it should be to the contrary.

Petitioner places great emphasis on the case of *Berryman v. Pullman Co.*, 48 F. S. 542, which it cites on page 16 of its brief. The facts of that case are not analogous to the facts of the instant cause. In the *Berryman* case, the defendant filed an affidavit in support of its motion for a summary judgment, and the plaintiff admitted all the facts alleged in said affidavit. The plaintiff was properly represented before the "Board" and there was no question present involving the authority of his representative. There was no question present involving the jurisdiction of the "Board" over the subject matter and the parties to the action. There was no question present involving the giving of notice of the hearing by the "Board", to the parties to the suit. Finally, the *Berryman case* is a District Court case.

On page 28 of its brief, the Petitioner contends that the Respondents are not entitled to judicial relief because they have failed to exhaust their remedies before the tribunals of the Brotherhood.

The law is well settled that a person is not required to perform a useless act. The Respondents had no knowledge of the execution of the letter of October 28, 1938, nor of the filing of their individual claims before the "Board", until after the rendition of the adverse decision by the "Board."

Does the Petitioner wish to contend that after the "Board" decided the claims adversely to the Respondents herein, the latter should have sought relief before the

tribunals of the Brotherhood? Any such action by the Respondents would have been absolutely useless. We reiterate that the law does not require a person to perform a useless Act.

Petitioner, throughout its brief, attempts to inject collective bargaining into the case. We submit that collective bargaining is irrelevant to the issues. Collective bargaining pertains to the collective rights of labor and not to the individual rights of individual employees for damages.

In the case of *Moore* v. *Illinois Central Railroad Co.*, 312 U. S. 360, this Court declared that an employee has the election of filing his claim or grievance with the "Board", or filing it in a court of law. This right of election given to the employee negatives the contention of the Petitioner regarding collective bargaining.

Section 153(j) of the Railway Labor Act provides that in a hearing before the "Board",

> "Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, * * *."

Section 151 of the Act provides, in part,

> "The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them."

By virtue of these two sections of the Act, an employee can represent himself before the "Board", or choose any representative he desires, his choice not being limited to a union organization, or to a union official or member. The very language and tenor of the Act negatives the argument of the Petitioner that collective bargaining is an issue in the instant cause.

On page 26 of its brief, Petitioner cites the case of *Smith, et al.* v. *Texas N. O. R. Co.*, 118 Fed. (2d) 75, as

supporting its theory that when a compromise agreement is executed with the designated representatives of the employees, all employees are bound thereby, and that the principles of common law agency are not applicable.

The quotation which the Petitioner cites from the *Smith* case glaringly illustrates its miscomprehension of the law enunciated in that case. The representatives of the union were not acting as agents of the decedent, but were acting as agents of the children of the deceased. The Court said,

> "The jurisdiction is persuasive that *they* were on notice and were *represented;* and, therefore, *their* rights were decided at the compromise between the employees as a group and the carrier." (Italics ours.)

The children of the deceased were properly represented by agents, and a careful reading of the quotation cited by Petitioner discloses that the children of the deceased may have been estopped from attacking the settlement. They had been given notice and did not act upon the same. The conclusion which the Petitioner draws from the *Smith* case is unwarranted.

Petitioner's arguments on the other points of its brief, we submit have been answered by our summation of the law in the brief, hence we shall not repeat them.

Conclusion.

We, therefore, respectfully submit that the Petitioner herein, presents no justiciable right to reverse the decision of the United States Circuit Court of Appeals; that they have correctly decided the issues presented and that this judgment should be affirmed.

Respectfully submitted,

JOHN H. GATELY,
134 South La Salle Street,
Chicago, Illinois,
Counsel for Respondents.

GERALD J. KOPTIK,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

No. 160.—October Term, 1944.

Elgin, Joliet and Eastern Railway Company, Petitioner, *vs.* G. W. Burley, et al.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[June 11, 1945.]

Mr. Justice Rutledge delivered the opinion of the Court.

This cause, arising upon an amended complaint;[1] brings for decision novel and important questions concerning the authority of a collective bargaining representative, affecting the operation of the Railway Labor Act of 1934. 48 Stat. 1185, 45 U. S. C. § 151 ff. The ultimate issues are whether such an agent has authority, by virtue of the Act or otherwise, either to compromise and settle accrued monetary claims of ten employees or to submit them for determination by the National Railroad Adjustment Board to the exclusion of their right, after the settlement and after the Board's adverse decision, to assert them in a suit brought for that purpose. The claims are for "penalty damages" for alleged violation of the starting time provisions of a collective agreement, varying from $3,500 to $14,000, and in the aggregate amounting to $65,274.00.[2]

The District Court rendered summary judgment for the carrier, holding that the Board's award was a final adjudication of the claims, within the union's power to seek and the Board's to make, precluding judicial review.[3] The Court of Appeals re-

[1] Amendments were allowed to cure jurisdictional defects found to exist upon an earlier appeal. Alderman *v.* Elgin, Joliet & Eastern Ry. Co., 125 F. 2d 971.

[2] The record sets forth no provision for penalty damages. But the complaint alleges that under the terms of the agreement each of the plaintiffs is entitled to "pay for an additional day, at time and one-half, at the regular daily rate" for each day he was required to work contrary to the agreement's terms.

[3] The court said: "I think that the controversy was submitted to the Board, that it had jurisdiction and that it was decided, and that the plaintiffs were represented there and are bound thereby. . . . I think the ruling of the Adjustment Board was binding upon the plaintiffs as well as upon the defendant, and that it is binding on this court in this proceeding."

versed the judgment, 140 F. 2d 488, holding that the record presented a question of fact whether the union had been authorized by respondents "to negotiate, compromise and settle" the claims. We granted certiorari, 323 U. S. —, in order to resolve the important questions affecting application and operation of the Act.

A statement of the more important facts will put the issues in sharper perspective. The controversy relates to operations in petitioner's so-called "Whiting Yard." Prior to July 24, 1934, respondents, or some of them, were employed by the Standard Oil Company to do private intraplant switching in its Whiting, Indiana, plant. On that date this work was taken over by petitioner. Until then Standard Oil's switching crews began work each day at hours fixed in advance by the management, which varied as plant operations required.

Prior to 1934 petitioner's crews at all yards in Indiana and Illinois began work daily in accordance with starting time provisions contained in Article 6 of a collective agreement made in 1927 between petitioner and the Brotherhood of Railroad Trainmen, governing rules, working conditions and rates of pay of yardmen.

Upon transfer of the Whiting yard switching to petitioner, respondents theretofore employed by Standard Oil became employees of petitioner and members of the Brotherhood. On July 24, 1934, company officials conferred with representatives of the engineers, the firemen and the yardmen concerning terms of employment. The Brotherhood acted for the yardmen. Apparently agreement was reached on all matters except starting time but, as to that, versions of what transpired differ. Respondents and the Brotherhood have maintained that the 1927 agreement, including Article 6, became applicable to them upon the transfer. They say, however, that they assented to a suspension of Article 6 for thirty days from July 27, 1934, to enable the company to work out adjustment to the plant's operations, and accordingly it governed their relation with petitioner from August 26, 1934.

The company has insisted that Article 6 did not become applicable to respondents upon the transfer and that it made no agreement to apply Article 6, other than to follow it as closely as possible, prior to October 31, 1938, when it and the Brotherhood eventually agreed to place Whiting yard crews on fixed starting time, under circumstances to be noted.

Whichever version is true, a long controversy resulted. The carrier continued to follow the former practice, although departures from the schedule were reduced, as it claims, in conformity with the oral undertaking to observe it as far as possible. The work went on without interruption. But numerous complaints on account of departures were made through local officers of the Brotherhood. Time slips were filed by the employees. Frequent negotiations took place. None however resulted in a settlement prior to October 31, 1938.

In this state of affairs, respondents authorized the Brotherhood to file complaint with the National Railroad Adjustment Board for violation of Article 6. This was done on November 23, 1936. The "statement of claim" was signed and filed by Williams, chairman of the general grievance committee. It asserted that the carrier, having "placed the employees under the agreement of the yardmen," had "failed to put into effect the starting time provisions" of Article 6, and denied that violation was justified either because the carrier had agreed with the Engineers to follow the formerly prevailing practice or by the carrier's claim that the work could be done in no other way. The submission was intended to secure compliance. There was no prayer for money damages. Petitioner maintained that Article 6 was not applicable.

The Board, following its customary procedure,[4] docketed the claim as No. 3537, notified the carrier and the union that the case, with many others docketed at the same time, was "assumed to be complete," and forwarded to each copies of the other's submissions. The record does not disclose what followed until nearly two years later.

On October 31, 1938, Williams and Johnson, secretary of the Brotherhood, two of the grievance committee's three members, accepted an offer made by petitioner's president, Rogers, to settle the claim. The settlement took the form of a proposal, made in a letter by Rogers to Williams, to settle some 61 different claims, including "Labor Board Docket No. 3537—Starting time of

[4] The procedure, though informal, consists principally in written statements or "submissions" filed by the parties, which perform the functions of pleading and evidence combined, and oral argument upon the submissions thus made. See Garrison, The National Railroad Adjustment Board: A Unique Administrative Agency (1937) 46 Yale L. J. 567, for a detailed description of the procedure. See also Final Report of the Attorney General's Committee on Administrative Procedure (1941) 185 *ff.*; Administrative Procedure in Government Agencies, Sen. Doc. No. 10, Part IV, 77th Cong., 1st Sess.

switch engines in Whiting S. O. Yard." Williams and Johnson endorsed acceptance for the Brotherhood and the yardmen on the letter. Because of its importance, pertinent portions are set forth in the margin.[5] On the day the settlement was concluded Rogers and Williams advised the Board of it by letter and jointly requested that the case be withdrawn from the docket, which accordingly was done.

Notwithstanding the settlement, a further dispute arose. In March, 1939, the Brotherhood, through Williams, requested the carrier to furnish a complete list of crews in the Whiting yard started at times other than those fixed by Article 6 from August 27, 1934, to November 15, 1938, when the settlement became effective. The company declined to furnish the list, stating it was at

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[5] The letter was addressed to Williams, as general chairman of the Brotherhood, and dated October 28, 1938. It stated:

"Since my letter of August 18th in which I tentatively proposed settlement of certain matters of grievance we have had further correspondence and conferences which have modified our decision in some cases. Therefore, in order that the whole matter be placed in concrete form I am outlining below our proposals to settle all of the cases except as otherwise specified.

"Case No. 5—Labor Board Docket # 3537—Starting time of switch engines in Whiting S. O. Yard.

"Settled by agreement that *the starting times for a ninety day trial period* commencing November 15th, 1938, *shall be the times provided for in Article 6* of the Yardmen's Agreement *instead of the starting times heretofore agreed upon and now being followed.* If at the end of the ninety day trial period the Railway Company or its employees claim that the starting times as fixed in Article 6 do not result in efficient and economical operation and in satisfaction to our employees and to the industry served, then representatives of the Railway Company and representatives of the Yardmen, and representatives of the Engineers and representatives of the Firemen *will sit down and work out a schedule of starting time best suited for meeting the special requirements of the industry.*

"We have by this letter given you a complete resume of all of the claims which have not heretofore been disposed of, filed by you on behalf of the employees whom you represent and have proposed in this letter a very liberal disposition of all the cases involved. The settlements proposed are predicated on *a complete settlement and withdrawal of all cases now pending* either before the board, *or under discussion with this office except Case No. 4*, which it is understood will be left to a decision by the National Railroad Adjustment Board, *and it is further understood that in the event these settlements are accepted that the claims listed in this letter cover all claims of a similar nature, and that no other claims covering the same or like situations will be presented when such claims arise from causes occurring prior to the date of this settlement.* [Emphasis added]

"Yours truly,

"S. M. Rogers, President.

"Accepted for the Yardmen: Oct. 31, 1938.

"C. H. Williams, General Chairman, B. of R. T.

"S. F. Johnson, Secretary, B. of R. T."

a loss to understand the reason for the request in view of the settlement.

The upshot of the dispute was the filing of another claim with the Board, Docket No. 7324, on May 1, 1939, by Williams, acting for the Brotherhood. This submission was "for one day's pay at time and one-half for each foreman and each helper for each day they were required to work in yard service in the Whiting (Standard Oil Company) Yard, in violation of the fixed starting time provided for in Article No. 6 of the Yardmen's Agreement . . . effective January 1, 1927, and applicable to Whiting (Standard Oil Company) Yardmen, July 27, 1934, from dates of August 27, 1934, until November 14, 1938, inclusive."

The submission not only maintained the applicability of Article 6 and accrual of the individual claims asserted. It also maintained that the settlement of October 31, 1938, was effective only to fix the starting time for the future and had no effect to waive or determine individual claims for penalty damages accrued prior to the settlement.[6]

The carrier's submission reiterated its position in Case No. 3537. It also relied upon the settlement as precluding later assertion of any claim, individual or collective, based upon occurrences prior to the date of the settlement.

The matter went to decision by the Board. Under the procedure prescribed in case of deadlock, cf. § 3 First (l), a referee was called in. The award was made by the First Division on September 6, 1940. It sustained the Board's jurisdiction,[7] found that "the parties to said dispute were given due notice of hearing

[6] Cf. note 5. The submission stated: "There were no agreements reached whereby payment for violation of Article No. 6 of the Yardmen's Agreement would be waived as a result of withdrawal of Labor Board Docket No. 3537. *In fact that case held no claims for payment for time. It was simply a case to settle* the dispute as to *the carrier's right to force the yard crews* in the Whiting yard *to work at times other than the fixed starting time* provided for in Article 6 . . .

"As stated before, Case No. 5—Labor Board Docket No. 3537 *contained no claim for pay* to Whiting Yardmen. *Consequently it was not a question before the Management and the Committee in the* starting time *negotiation* and claim cannot be made that a waiver was made on a matter which was not negotiated."

The submission also denied that oral agreements relating to starting time, claimed by the carrier to have been made at the time of the transfer in 1934, could be effective "to invalidate the prescribed written rule of Article 6." Williams however did not question the validity of the verbal agreement, as he maintained, for the thirty day suspension.

[7] The submissions in no way challenged the jurisdiction of the Board or of the Division.

thereon," and held that "the evidence shows that the parties to the agreement disposed of the claim here made by the letter of carrier dated October 28, 1938, accepted by employees October 31, 1938." Accordingly the claim was "denied per findings."

Thereafter, on November 19, 1940, the present suit was instituted. As has been noted, the case comes here after a summary judgment rendered on the carrier's motion, supported by the affidavit of its vice president. This in effect set up the compromise agreement and the award in Case No. 7324 as bases for the judgment sought.

The range and precise nature of the issues may be summarized best perhaps as they were shaped upon respondents' opposition to the carrier's motion. They denied that either Williams or the union had authority to release their individual claims or to submit them for decision by the Board. They relied upon provisions of the Brotherhood's constitution and rules,[8] of which the carrier was alleged to have knowledge, as forbidding union officials to release individual claims or to submit them to the Board "without specific authority to do so granted by the individual members themselves"; and denied that such authority in either respect had been given.

The validity and the conclusive effect of the award were challenged also upon other grounds, among them that respondents individually received no notice of the submission or the hearing until after the award was made; that since the award denied a claim for money damages, it was within the exception of Section 3 First (m), which provides that "the awards shall be final and binding upon both parties to the dispute, except in so far as they shall contain a money award," and therefore did not preclude this suit; and that the Act, if construed to make the award conclusive, would violate the Fifth Amendment's due process provision by denying judicial review to defeated employees, though allowing it to defeated employers. Cf. § 3 First (p), (q); *Washington Terminal Co.* v. *Boswell*, 124 F. 2d 235, affirmed by an equally divided Court, 319 U. S. 732.

Finally respondents suggested most sweepingly that the Board

[8] See Part III. The provisions regulate the union's internal procedure in relation to making changes in a "general or system wage schedule or agreement," Rule No. 3, and that to be followed when the local chairman or grievance committee fails "satisfactorily to adjust any grievance referred to it." Rule No. 7. The latter includes a provision that "a general grievance committee may authorize their chairman to handle all grievances received from local lodges." See also note 40.

may act "merely as an arbitrator," with the result that "any decisions thereunder are void because it passes on matters and bases its decision and its opinion on law and fact which is contrary to public policy." The prayer was that the court overrule the carrier's motion for summary judgment and, in doing so, determine that the release was not effective; the award was not a final adjudication of the claims; and the award was void for lack of jurisdiction of the parties or the subject matter or "because said Act under which award was entered is unconstitutional."

The District Court's judgment rested squarely on the conclusive effect of the award in Docket No. 7324. It did not indicate whether it regarded the Brotherhood's authority to submit the claims and appear for the employees as derived from the statute or, apart from the statute, as a matter of law upon the particular facts. But it must be taken to have held that, upon the pleadings and the affidavits, no genuine issue of material fact was presented, Fed. Rules Civ. Proc., Rule 56(c), and therefore that it was immaterial if, as alleged, respondents had not individually given the Brotherhood or Williams specific authority to submit their claims for decision or represent them in the hearings.

The Court of Appeals, however, made no reference to the issues concerning the award and its effect upon the claims. But its judgment must be taken to have determined implicitly that none of petitioner's contentions in these respects is valid.

The issues are not merely, as the Court of Appeals assumed, whether the Brotherhood had authority to compromise and settle the claims by agreement with the carrier and whether on the record this presents a question of fact. For petitioner insists, and the District Court held, that the award of the Board was validly made, and is final, precluding judicial review. We do not reach the questions of finality, which turn upon construction of the statutory provisions and their constitutional validity as construed.[9] Those questions should not be determined unless the award was validly made, which presents, in our opinion, the crucial question. Respondents attack the validity and legal effectiveness of the award in three ways. Two strike at its validity on narrow grounds. Respondents say the Brotherhood had no power to submit the dispute for decision by the Board without authority

[9] Cf. § 3 First (m), (o), (p), (q).

given by each of them individually and that no such authority was given. They also maintain that they were entitled to have notice individually of the proceedings before the Board and none was given.

The third and most sweeping contention undercuts all other issues concerning the award's effects, whether for validity or for finality. In substance it is that the award, when rendered, amounts to nothing more than an advisory opinion. The contention, founded upon language of the opinion in *Moore* v. *Illinois Central R. Co.*, 312 U. S. 630, regards the Act's entire scheme for the settlement of grievances as wholly conciliatory in character, involving no element of legal effectiveness, with the consequence that the parties are entirely free to accept or ignore the Board's decision.

At the outset we put aside this broadest contention as inconsistent with the Act's terms, purposes and legislative history.[10] The *Moore* case involved no question concerning the validity or the legal effectiveness of an award when rendered.[11] Nor did it purport to determine that the Act creates no legal obligations through an award or otherwise. Apart from the affirmance by equal division in *Washington Terminal Co.* v. *Boswell*, *supra*, both prior and later decisions here are wholly inconsistent with such a view of its effects. Cf. *Virginian Ry. Co.* v. *System Federation*, 300 U. S. 515; *Texas & N. O. R. Co.* v. *Railway Clerks*, 281 U. S. 548;[12] *Switchmen's Union* v. *National Mediation Board*,

[10] Cf. Part. I.

[11] It was held that nothing in the Act "purports to take away from the courts the jurisdiction to determine a controversy over wrongful discharge or to make an administrative finding a prerequisite to filing a suit in court," 312 U. S. at 634; and therefore the employee's suit could be maintained against the carrier without prior resort to the Adjustment Board. Among the reasons assigned was that the machinery provided for settling disputes was not "based on a philosophy of legal compulsion" but created "a system for peaceful adjustment and mediation voluntary in its nature."

The problem presented was whether the Adjustment Board procedure either was exclusive or was an essential preliminary to judicial proceedings within the doctrine of primary jurisdiction. These were questions not entirely determinable by the criterion of whether the procedure is wholly advisory or conciliatory in character. For, conceivably, Congress might have made the taking of the Board's merely advisory opinion a condition precedent to asking for judicial relief; and, conversely, allowing that relief without prior resort to the Board does not necessarily make the Board's action, when taken, merely advisory.

[12] Thus, one of the statute's primary commands, judicially enforceable, is found in the repeated declaration of a duty upon all parties to a dispute to negotiate for its settlement. See note 26; Virginian Ry. Co. v. System

320 U. S. 297; *General Committee* v. *M-K-T R. Co.*, 320 U. S. 323; *General Committee* v. *Southern Pacific Co.*, 320 U. S. 338.

I.

The difference between disputes over grievances and disputes concerning the making of collective agreements is traditional in railway labor affairs. It has assumed large importance in the Railway Labor Act of 1934, substantively and procedurally.[13] It divides the jurisdiction and functions of the Adjustment Board from those of the Mediation Board, giving them their distinct characters. It also affects the parts to be played by the collective agent and the represented employees, first in negotiations for settlement in conference and later in the quite different procedures which the Act creates for disposing of the two types of dispute. Cf. §§ 3, 4.

The statute first marks the distinction in Section 2, which states as among the Act's five general purposes: "(4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions." The two sorts of dispute are sharply distinguished,[14] though there are points of common treatment. Nevertheless, it is clear from the Act itself, from the history of railway labor disputes and from the legislative history of the various statutes which have dealt with them,[15] that Congress has drawn major lines of difference between the two classes of controversy.

Federation, 300 U. S. 515; cf. Switchmen's Union v. National Mediation Board, 320 U. S. 297, 300, 320; General Committee v. M-K-T R. Co., 320 U. S. 323, 331, 334. This duty is not merely perfunctory. Good faith exhaustion of the possibility of agreement is required to fulfill it. Cf. Virginian Ry. Co. v. System Federation, *supra*, at 548, 550; Trainmen v. Toledo, P. & W. R. Co., 321 U. S. 50, 56 ff. At successive stages of the statutory procedure other duties are imposed. Cf. §§ 5 First (b), 6, 10.

[13] Cf. the references cited in notes 4 and 15.

[14] Cf. text Part II at note 38; also Hughes Tool Co. v. National Labor Relations Board, 147 F. 2d 69, 72, 73.

[15] See the references cited in note 4; Hearings before Committee on Interstate Commerce on H. R. 7650, 73d Cong., 2d Sess.; Hearings before Committee on Interstate Commerce on S. 3266, 73d Cong., 2d Sess.; Pennsylvania R. Co. v. Railroad Labor Board, 261 U. S. 72; Pennsylvania System Federation v. Pennsylvania R. Co., 267 U. S. 203; Texas & N. O. R. Co. v. Brotherhood, 281 U. S. 548; Virginian Ry. Co. v. System Federation, 300 U. S. 515.

The first relates to disputes over the formation of collective agreements or efforts to secure them. They arise where there is no such agreement or where it is sought to change the terms of one and therefore the issue is not whether an existing agreement controls the controversy. They look to the acquisition of rights for the future, not to assertion of rights claimed to have vested in the past.

The second class, however, contemplates the existence of a collective agreement already concluded or, at any rate, a situation in which no effort is made to bring about a formal change in terms or to create a new one. The dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation or to an omitted case. In the latter event the claim is founded upon some incident of the employment relation, or asserted one, independent of those covered by the collective agreement, e. g., claims on account of personal injuries. In either case the claim is to rights accrued, not merely to have new ones created for the future.

In general the difference is between what are regarded traditionally as the major and the minor disputes of the railway labor world.[16] The former present the large issues about which strikes ordinarily arise with the consequent interruptions of traffic the Act sought to avoid. Because they more often involve those consequences and because they seek to create rather than to enforce contractual rights, they have been left for settlement entirely to the processes of noncompulsory adjustment.

The so-called minor disputes, on the other hand, involving grievances, affect the smaller differences which inevitably appear in the carrying out of major agreements and policies or arise incidentally in the course of an employment. They represent specific maladjustments of a detailed or individual quality. They seldom

[16] Cf. the references cited in note 4. Commissioner (also Coordinator) Eastman, who very largely drafted the 1934 amendments, said in testifying at the House Committee hearings concerning them:

"Please note that disputes concerning changes in rates of pay, rules, or working conditions may not be so referred [to the National Adjustment Board], but are to be handled, when unadjusted, through the process of mediation. The national adjustment board is to handle only the minor cases growing out of grievances or out of the interpretation or application of agreements." Hearings before Committee on Interstate Commerce on H. R. 7650, 73 Cong., 2d Sess., 47; cf. also pp. 49, 51, 59, 62. And see the testimony of Harrison, a principal union proponent, before the House Committee, *id.* at 80-83; and before the Senate Committee, Hearings before Committee on Interstate Commerce on S. 3266, 73d Cong., 2d Sess., 33, 35.

produce strikes, though in exaggerated instances they may do so.[17] Because of their comparatively minor character and the general improbability of their causing interruption of peaceful relations and of traffic, the 1934 Act sets them apart from the major disputes and provides for very different treatment.

Broadly, the statute as amended marks out two distinct routes for settlement of the two classes of dispute, respectively, each consisting of three stages. The Act treats the two types of dispute alike in requiring negotiation as the first step toward settlement and therefore in contemplating voluntary action for both at this stage, in the sense that agreement is sought and cannot be compelled. To induce agreement, however, the duty to negotiate is imposed for both grievances and major disputes.[18]

Beyond the initial stages of negotiation and conference, however, the procedures diverge. "Major disputes" go first to mediation under the auspices of the National Mediation Board; if that fails, then to acceptance or rejection of arbitration, cf. § 7; *Trainmen* v. *Toledo, P. & W. R. Co.*, 321 U. S. 50; and finally to possible presidential intervention to secure adjustment. § 10. For their settlement the statutory scheme retains throughout the traditional voluntary processes of negotiation, mediation, voluntary arbitration, and conciliation. Every facility for bringing about agreement is provided and pressures for mobilizing public opinion are applied. The parties are required to submit to the successive procedures designed to induce agreement. § 5 First (b). But compulsions go only to insure that those procedures are exhausted before resort can be had to self-help. No authority is empowered to decide the dispute and no such power is intended, unless the parties themselves agree to arbitration.

The course prescribed for the settlement of grievances is very different beyond the initial stages. Thereafter the Act does not leave the parties wholly free, at their own will, to agree or not to agree. On the contrary, one of the main purposes of the 1934 amendments was to provide a more effective process of settlement.[19]

[17] Cf. the testimony of Eastman and Harrison, cited in note 16.

[18] Cf. note 12; also notes 26, 27, and text *infra*. The obligation is not partial. In plain terms the duty is laid on carrier and employees alike, together with their representatives; and in equally plain terms it applies to all disputes covered by the Act, whether major or minor.

[19] H. Rep. No. 1944 on H. R. 9861, 73d Cong., 2d Sess., 2; S. Rep. No. 1065 on S. 3266, 73d Cong., 2d Sess., 1, 2.

Prior to 1934 the parties were free at all times to go to court to settle these disputes. Notwithstanding the contrary intent of the 1926 Act, each also had the power, if not the right, to defeat the intended settlement of grievances by declining to join in creating the local boards of adjustment provided for by that Act. They exercised this power to the limit. Deadlock became the common practice, making decision impossible. The result was a complete breakdown in the practical working of the machinery. Grievances accumulated and stagnated until the mass assumed the proportions of a major dispute. Several organizations took strike ballots and thus threatened to interrupt traffic, a factor which among others induced the Coordinator of Transportation to become the principal author and advocate of the amendments. The sponsor in the House insisted that Congress act upon them before adjournment for fear that if no action were taken a railroad crisis might take place.[20] The old Mediation Board was helpless.[21] To break this log jam, and at the same time to get grievances out of the way of the settling of major disputes through the functioning of the Mediation Board, the Adjustment Board was created and given power to decide them.[22]

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[20] Cf. 78 Cong. Rec. 12553. Coordinator Eastman referred, in his testimony, to four recent strike votes occasioned by deadlock. Hearings before Committee on Interstate Commerce, on S. 3266, 73d Cong., 2d Sess., 17.

[21] The Chairman told the Senate Committee: "The provision in the present act [1926] for adjustment boards is in practice about as near a fool provision as anything could possibly be. I mean this—that on the face of it they shall, by agreement, do so and so. Well, you can do pretty nearly anything by agreement, but how can you get them to agree?" Hearings before Committee on Interstate Commerce on S. 3266, 73d Cong., 2d Sess., 137.

[22] See, for a general view of the circumstances inducing enactment of the 1934 Amendments, the references cited above in notes 4, 15, 16, 19. The report of the House Committee in charge of the bill stated:

"Many thousands of these disputes have been considered by boards established under the Railway Labor Act; but the boards have been unable to reach a majority decision, and so the proceedings have been deadlocked. These unadjusted disputes have become so numerous that on several occasions the employees have resorted to the issuance of strike ballots and threatened to interrupt interstate commerce in order to secure an adjustment. This has made it necessary for the President of the United States to intervene and establish an emergency board to investigate the controversies. This condition should be corrected in the interest of industrial peace and of uninterrupted transportation service. This bill, therefore, provides for the establishment of a national board of adjustment to which these disputes may be submitted if they shall not have been adjusted in conference between the parties." H. Rep. No. 1944, 73d Cong., 2d Sess., 3. Cf. also the testimony of Coordinator Eastman, Hearings before Committee on Interstate Commerce on H. R. 7650, 73d Cong., 2d Sess., 49.

The procedure adopted is not one of mediation and conciliation only, like that provided for major disputes under the auspices of the Mediation Board. Another tribunal of very different character is established with "jurisdiction" to determine grievances and make awards concerning them. Each party to the dispute may submit it for decision, whether or not the other is willing, provided he has himself discharged the initial duty of negotiation.[23] § 3 First (i). Rights of notice, hearing, and participation or representation are given. § 3 First (j). In some instances judicial review and enforcement of awards are expressly provided or are contemplated. § 3 First (p); cf. § 3 First (m). When this is not done, the Act purports to make the Board's decisions "final and binding." § 3 First (m).

The procedure is in terms and purpose very different from the preexisting system of local boards. That system was in fact and effect nothing more than one for what respondents call "voluntary arbitration." No dispute could be settled unless submitted by agreement of all parties. When one was submitted, deadlock was common and there was no way of escape. The Adjustment Board was created to remove the settlement of grievances from this stagnating process and bring them within a general and inclusive plan of decision.[24] The aim was not to dispense with agreement. It was to add decision where agreement fails and thus to safeguard the public as well as private interests against the harmful effects of the preexisting scheme.

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[23] Section 3 First (i) expressly conditions the right to move from negotiation into proceedings before the Adjustment Board upon "failing to reach an adjustment in this manner," i. e., by negotiation.

[24] See the testimony of Coordinator Eastman and Mr. Harrison, cited in note 16. The latter stated, at the Senate Committee hearings, pp. 33, 35: "... [T]his has been a question for the last 14 years as to what kind of boards we are going to have to settle our grievances. ... We have always sought national boards; the railroads ... have sought the system boards, regional boards. ... Most of the boards ... under the present law have deadlocked on any number of cases. As a result of that there was fast growing up in our industry a serious condition that might very well develop into substantial interruption of interstate commerce. ... These *railway labor organizations have always opposed compulsory determination of their controversies.* We have lived a long time and got a lot of experience, and we know that these minor cases that develop out of contracts that we make freely, and ... *we are now ready to concede that we can risk having our grievances go to a board and get them determined, and that is a contribution that these organizations are willing to make;* ... if we are going to get a hodgepodge arrangement by law, then we don't want to give up that right, because we only give up the right because we feel that we will get a measure of justice by this machinery that we suggest here." (Emphasis added.)

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II.

The collective agent's power to act in the various stages of the statutory procedures is part of those procedures and necessarily is related to them in function, scope and purpose.

The statute itself vests exclusive authority to negotiate and to conclude agreements concerning major disputes in the duly selected collective agent. Cf. *Virginian Ry. Co.* v. *System Federation, supra.*[25] Since the entire statutory procedure for settling major disputes is aimed only at securing agreement and not decision, unless the parties agree to arbitration, this exclusive authority includes representation of the employees not only in the stage of conference, but also in the later ones of mediation, arbitration and conciliation.

Whether or not the agent's exclusive power extends also to the settlement of grievances, in conference or in proceedings before the Board, presents more difficult questions. The statute does not expressly so declare. Nor does it explicitly exclude these functions. The questions therefore are to be determined by implication from the pertinent provisions. These are the ones relating to rights of participation in negotiations for settlement and in proceedings before the Board. They are in part identical with the provisions relating to major disputes, but not entirely so; and the differences are highly material.

The questions of power to bargain concerning grievances, that is, to conclude agreements for their settlement, and to represent aggrieved employees in proceedings before the Board are not identical. But they obviously are closely related in the statutory scheme and in fact. If the collective agent has exclusive power to settle grievances by agreement, a strong inference, though not necessarily conclusive, would follow for its exclusive power to represent the aggrieved employee before the Board. The converse also would be true. Accordingly it will be convenient to consider the two questions together.

The primary provisions affecting the duty to treat are found in Section 2 First and Second, imposing the duty generally as to all disputes, both major and minor, and Sections 2 Sixth and 3 First (i), together with the proviso to Section 2 Fourth, which apply specially to grievances. These sections in material part

[25] Cf. also Medo Photo Supply Corp. v. National Labor Relations Board, 321 U. S. 678; J. I. Case Co. v. National Labor Relations Board, 321 U. S. 332.

are set forth in the margin,[26] except the proviso which is as follows: "Provided, That nothing in this Act shall be construed to prohibit a carrier from permitting *an employee, individually,* or local representatives of employees *from conferring* with management during working hours *without loss of time,* or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization."[27] (Emphasis added.)

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[26] By Section 2 First, "*It shall be the duty of all* carriers, their officers, agents, and *employees* to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and *to settle all disputes,* whether arising out of *the application* of such agreements or otherwise, in order to avoid any interruption to commerce. . . ." By Section 2 Second, "*All* disputes between a carrier or carriers and its or their employees *shall be considered, and, if possible, decided,* with all expedition, in conference *between representatives designated and authorized* so to confer, respectively, by the carrier or carriers and *by the employees thereof interested in the dispute.*" (Emphasis added.) These are the basic sections creating the duty, applicable to all disputes, major or minor, and to carriers and employees alike.

Other provisions affecting the general duty to treat are those of Section 2 Third, that "representatives, *for the purposes of this Act,* shall be designated by the respective parties without interference" by the other and "need not be persons in the employ of the carrier"; of Section 2 Fourth, that "the majority of any craft or class of employees shall have the right to determine who shall be *the representative of the craft or class for the purposes of this Act*"; and of Section 2 Eighth that "every carrier shall notify its employees by printed notices . . . that *all disputes* between the carrier and its employees *will be handled in accordance with the requirements of this Act.*" (Emphasis added.)

Section 2 Sixth applies specially to grievances, as does Section 3 First (i). The former provides: "In case of a dispute between a carrier or carriers and its or their employees, *arising out of grievances or out of the interpretation or application of agreements* concerning rates of pay, rules, or working conditions, *it shall be the duty of the designated representative* or representatives of such carrier or carriers and *of such employees,* within ten days after the receipt of notice of a desire on the part of either party *to confer* in respect to such dispute, to specify a time and place. . . ." Section 3 First (i) is as follows: "The disputes between *an employee* or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, *shall be handled in the usual manner up to and including* the chief operating officer of the carrier designated to handle such disputes; but, *failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board* with a full statement of the facts and all supporting data bearing upon the disputes." (Emphasis added.)

[27] Section 2 Eighth makes this proviso part of the contract of employment between the carrier and each employee, and Section 2 Tenth makes it a misdemeanor for the carrier to refuse to observe it. Section 2 Eighth incorporates the provisions of Sections 2 Third, Fourth and Fifth in each employee's contract of employment. Section 2 Tenth makes it a misdemeanor for the carrier to fail or refuse to comply with the terms of Sections 2 Third, Fourth, Fifth, Seventh and Eighth.

Relating to participation in the Board's proceedings, in addition to the concluding sentence of Section 3 First (i), see note 26, is Section 3 First (j), as follows: "Parties may be heard either *in person*, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings *to the employee* or employees and the carrier or carriers involved in any dispute submitted to them." (Emphasis added)

Petitioner urges that, notwithstanding the proviso and Section 3 First (j), the effect of the provisions taken as a whole is to make the collective agent the employees' exclusive representative for the settlement of *all* disputes, both major and minor, and of the latter "whether arising out of the application of such [collective] agreements or otherwise." The argument rests primarily upon Sections 2 First, Second, Third, Fourth, Sixth, and 3 First (i). It emphasizes the carrier's duty to treat with the collective representative, as reinforced by Sections 2 Eighth and Tenth.[28]

Petitioner does not squarely deny that the aggrieved employee may confer with the carrier's local officials either personally or through *local* union representatives in accordance with the proviso to Section 2 Fourth. But this right, if it exists, is regarded apparently as at most one to be heard, since in petitioner's view the power to make settlement by agreement is vested exclusively in the collective agent. Cf. §§ 2 Sixth and 3 First (i).

The collective agent, as the carrier conceives the statute, is the "representative[s], designated and authorized to confer" within the meaning of Section 2 Second, without distinction between major and minor disputes. It is likewise the "representative, for the purposes of this Act," again without distinction between the two types of dispute, in the selection of which by "the respective parties" Section 2 Third forbids the other to interfere. It is also "the designated representative" of the employees with whom, by Section 2 Sixth, the carrier is required to treat concerning grievances in conference, a provision considered to carry over into Section 3 First (i). The latter requires that disputes over grievances "shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes."

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[28] See note 27.

In accordance with this view "either party," within the further provision of Section 3 First (i) authorizing reference of the dispute to the Adjustment Board "by petition of the parties or by either party," refers to the carrier or the collective agent, not to the aggrieved employee acting otherwise than by the collective agent. Hence, "parties" as used in Section 2 First (j) is given similar meaning. Consequently the collective agent also has exclusive power to submit the dispute to the Board and to represent aggrieved employees before it.

Petitioner's view has been adopted, apparently, in the general practice, if not the formally declared, policy of the Adjustment Board. And this, it seems, has been due to the position taken consistently by the employees' representatives on the Board, over the opposition of carrier representatives.[29] The unions, apparently, like petitioner in this case, interpret the Act as not contemplating two distinct systems for the settlement of disputes, one wholly collective for major disputes, the other wholly individual for minor ones. In this view the collective agent becomes a party to the collective agreement by making it and its interest as representative of the collective interest does not cease when that function ends. It remains a party to the agreement, as such representative, after it is made; and consequently, in that capacity and for the protection of the collective interest, is concerned with the manner in which the agreement may be interpreted and applied.

Accordingly, petitioner urges that the statute, both by its terms and by its purpose, confers upon the collective agent the same exclusive power to deal with grievances, whether by negotiation and contract, or by presentation to the Board when agreement fails, as is given with respect to major disputes. And the aggrieved employee's rights of individual action are limited to rights of hearing before the union and possibly also by the carrier.

We think that such a view of the statute's effects, in so far as it would deprive the aggrieved employee of effective voice in any settlement and of individual hearing before the Board, would be contrary to the clear import of its provisions and to its policy.

[29] Cf. Administrative Procedure in Government Agencies, Sen. Doc. 10, Part IV, 77th Cong., 1st Sess., 7.

It would be difficult to believe that Congress intended, by the 1934 amendments, to submerge wholly the individual and minority interests, with all power to act concerning them, in the collective interest and agency, not only in forming the contracts which govern their employment relation,[30] but also in giving effect to them and to all other incidents of that relation. Acceptance of such a view would require the clearest expression of purpose. For this would mean that Congress had nullified all preexisting rights of workers to act in relation to their employment, including perhaps even the fundamental right to consult with one's employer, except as the collective agent might permit. Apart from questions of validity, the conclusion that Congress intended such consequences could be accepted only if it were clear that no other construction would achieve the statutory aims.[31]

The Act's provisions do not require such a construction. On the contrary they appear expressly to preclude it. The proviso to Section 2 Fourth in terms reserves the right of "an employee *individually*" to confer with management; and Section 3 First (j) not only requires the Board to give "due notice of all hearings *to the employee* . . . involved in any dispute submitted . . . ," but provides for "parties" to be heard "either *in person*, by counsel, or by other representatives, as they may respectively elect."

These provisions would be inapposite if the collective agent, normally a labor union and an unincorporated association, exclusively were contemplated. Such organizations do not and cannot appear and be heard "in person." Nor would the provision for notice "to *the employee* . . . involved in any dispute" be either appropriate or necessary. If only the collective representative were given rights of submission, notice, appearance

[30] Cf. Steele v. Louisville & N. R. Co., 323 U. S. 192; Tunstall v. Brotherhood of Locomotive Firemen & Enginemen, 323 U. S. 210; Wallace Corp. v. National Labor Relations Board, 323 U. S. 248.

[31] In this connection it is important to recall that the Act does not contemplate the existence of closed shops, to the extent at any rate that the carrier is forbidden to make such agreements. Cf. § 2 Fourth; 78 Cong. Rec. 12,602; 40 Op. Atty. Gen., No. 59 (Dec. 29, 1942). Accordingly the interests of unorganized workers and members of minority unions are concerned in the solution. These are not always adverse to the interests of the majority or of the designated union. But they may be so or even hostile. Cf. the authorities cited in note 30. To regard the statute as so completely depriving persons thus situated of voice in affairs affecting their very means of livelihood would raise very serious questions.

and representation, language more aptly designed so to limit those rights was readily available and was essential for the purpose.

This conclusion accords fully with the terms of the proviso to Section 2 Fourth. It appears to be intended as a qualification, in respect to loss of time and free transportation, of the section's preceding prohibitions against the carrier's giving financial and other aid to labor organizations and to employees in an effort to influence their union affiliations.[32] However, the language clearly contemplates also that the individual employee's right to confer with the management about his own grievance is preserved. There is some indication in the legislative history to this effect.[33] The right is so fundamental that we do not believe the purpose was to destroy it. Cf. 40 Op. Atty. Gen., No. 59, pp. 5, 6 (Dec. 29, 1942); *Hughes Tool Co.* v. *National Labor Relations Board*, 147 F. 2d 69.

Rights of conference are not identical with rights of settlement. But the purpose of conference and the duty to treat is to bring about agreement. The right and the obligation to share in the negotiations are relevant to their aim. Conceivably the statute might confer the right to participate in the negotiations, that is, to be heard before any agreement is concluded, either upon the collective agent or upon the aggrieved employee or employees, at the same time conferring upon the other the final voice in determining the terms of the settlement. This is, in effect, the position taken by each of the parties in this case. But they differ concerning where the final say has been vested. Petitioner maintains it has been given to the union. Respondents say it has been left with them.

In the view we take the Act guarantees to the aggrieved employee more than merely the right to be heard by the union and the carrier. We cannot say that the terms of the proviso to Section 2 Fourth and of Section 3 First (j) are so limited. Moreover, Section 3 First (p) expressly states that the statutory

[32] This undoubtedly was the primary object. The language in the concluding clause, "while engaged in the business of a labor organization," applies literally only to employees traveling upon union business, and has no apparent application to the preceding provision relating to the individual employee's right to confer with management.

[33] Hearings before Committee on Interstate Commerce on H. R. 7650, 73d Cong., 2d Sess., 36, 44, 89.

suit to enforce an award in favor of an aggrieved employee may be brought by "the petitioner," presumably the collective agent, or by the employee. All of these provisions contemplate effective participation in the statutory procedures by the aggrieved employee.

His rights, to share in the negotiations, to be heard before the Board, to have notice, and to bring the enforcement suit, would become rights more of shadow than of substance if the union, by coming to agreement with the carrier, could foreclose his claim altogether at the threshold of the statutory procedure. This would be true in any case where the employee's ideas of appropriate settlement might differ from the union's. But the drastic effects in curtailment of his preexisting rights to act in such matters for his own protection would be most obvious in two types of cases: one, where the grievance arises from incidents of the employment not covered by a collective agreement, in which presumably the collective interest would be affected only remotely, if at all; the other, where the interest of an employee not a member of the union and the collective interest, or that of the union itself, are opposed or hostile. That the statute does not purport to discriminate between these and other cases furnishes strong support for believing its purpose was not to vest final and exclusive power of settlement in the collective agent.[34]

We need not determine in this case whether Congress intended to leave the settlement of grievances altogether to the individual workers, excluding the collective agent entirely except as they may specifically authorize it to act for them, or intended it also to have voice in the settlement as representative of the collective interest. Cf. *Matter of Hughes Tool Company*, 56 N. L. R. B. 981, modified and enforced, *Hughes Tool Co.* v. *National Labor Relations Board*, *supra*. The statute does not expressly exclude grievances from the collective agent's duty to treat or power to submit to the Board. Both collective and individual interests may be concerned in the settlement where, as in this case, the dispute concerns all members alike, and settlement hangs exclusively upon a single common issue or cause of dispute arising from the terms

[34] Cf. note 37 and text. It is to be doubted that Congress by the generally inclusive language used concerning grievances intended, for instance, to give the collective agent exclusive power to settle a grievance arising independently of the collective agreement, affecting only nonunion men to whose claim the union and the majority were hostile.

of a collective agreement.[35] Those interests combine in almost infinite variety of relative importance in relation to particular grievances, from situations in which the two are hostile or in which they bear little or no relation of substance to each other and opposed to others in which they are identified.[36]

Congress made no effort to deal specifically with these variations.[37] But whether or not the collective agent has rights, independently of the aggrieved employee's authorization, to act as representative of the collective interest and for its protection in any settlement, whether by agreement or in proceedings before the Board, an award cannot be effective as against the aggrieved employee unless he is represented individually in the proceedings in accordance with the rights of notice and appearance or representation given to him by Section 3 First (j). Those rights are separate and distinct from any the collective agent may have to represent the collective interest. For an award to affect the employee's rights, therefore, more must be shown than that the collective agent appeared and purported to act for him. It must appear

[35] But whether or not the carrier's violation affects all the members of the group immediately and alike, so as to create a present basis for claims by each, the violation, though resulting from misinterpretation, would constitute a present threat to the similar rights of all covered by the contract. Cf. Hughes Tool Co. *v.* National Labor Relations Board, *supra*, 72, 74; 40 Op. Atty. Gen., No. 59, pp. 4, 5, (Dec. 29, 1942).

To leave settlements in such cases ultimately to the several choices of the members, each according to his own desire without regard to the effect upon the collective interest, would mean that each affected worker would have the right to choose his own terms and to determine the meaning and effect of the collective agreement for himself. Necessarily, the carrier would be free to join with him in doing so and thus to bargain with each employee for whatever terms its economic power, pitted against his own, might induce him to accept. The result necessarily would be to make the agreement effective, not to all alike, but according to whatever varied interpretations individual workers, from equally varied motivations, might be willing to accept. To give the collective agent power to make the agreement, but exclude it from any voice whatever in its interpretation would go far toward destroying its uniform application.

[36] Depending upon the substantive character of the claim, its foundation in a collective agreement or otherwise, its intrinsically substantial or insubstantial nature, the number of employees affected, the length of time it remains unsettled, the number of claims allowed so to run, or perhaps other factors, the grievance may be a matter of large moment to the group as a whole or of little or no concern to it and, it may be, of either identical or converse importance to the individual or individuals directly affected.

[37] Congress was concerned primarily with differences between the carrier and the employees, not with differences among the latter or between them or some of them, and the collective agent. The statute therefore was not drawn with an eye levelled to these problems, except as to choice of representatives, cf. § 2 Fourth; § 2 Ninth; and note 34.

that in some legally sufficient way he authorized it to act in his behalf.[38]

Petitioner's contrary view, as has been indicated, regards the settlement of grievances as part of the collective bargaining power, indistinguishable from the making of collective agreements. The assumption ignores the major difference which the Act has drawn between those functions, both in defining them and in the modes provided for settlement.

To settle for the future alone, without reference to or effect upon the past, is in fact to bargain collectively, that is, to make a collective agreement. That authority is conferred independently of the power to deal with grievances, as part of the power to contract "concerning rates of pay, rules, or working conditions." It includes the power to make a new agreement settling for the future a dispute concerning the coverage or meaning of a pre-existing collective agreement. For the collective bargaining power is not exhausted by being once exercised; it covers changing the terms of an existing agreement as well as making one in the first place.

But it does not cover changing them with retroactive effects upon accrued rights or claims. For it is precisely the difference between making settlements effective only for the future and making them effective retroactively to conclude rights claimed as having already accrued which marks the statutory boundary between collective bargaining and the settlement of grievances. The latter by explicit definition includes the "interpretation or application" of existing agreements. To regard this as part of the collective bargaining power identifies it with making new agreements having only prospective operation; and by so doing obliterates the statute's basic distinction between those functions.[39]

[38] Authority might be conferred in whatever ways would be sufficient according to generally accepted or "common law" rules for the creation of an agency, as conceivably by specific authorization given orally or in writing to settle each grievance, by general authority given to settle such grievances as might arise, or by assenting to such authority by becoming a member of a union and thereby accepting a provision in its constitution or rules authorizing it to make such settlements.

[39] The distinction holds true although "interpretation or application" may look to the future as well as the past, as it often does. It goes to the source of the right asserted, whether in an antecedent agreement or only to one presently sought. The difference is important for other issues as well as those presently involved, e. g., application of statutes of limitations.

The distinction is not to be ignored or wiped out merely because a particular dispute or agreement may look both to the past and to the future. The special procedure for settling grievances was created because it was intended they should be disposed of differently from disputes over "rates

The Brotherhood had power, therefore, as collective agent to make an agreement with the carrier, effective for the future only, to settle the question of starting time, and that power was derived from the Act itself. In dealing within its scope, the carrier was not required to look further than the Act's provisions to ascertain the union's authority. But it does not follow, as petitioner assumes, that it had the same right to deal with the union concerning the past. That aspect of the dispute was not part of the collective agent's exclusive statutory authority.

If to exclude it severs what otherwise might be considered organic, the severance clearly is one which Congress could make and is one we think it has made, by its definition of grievances and by the provisions for individual participation in their settlement. If, moreover, as petitioner urges, this may make the settlement less convenient than if power to deal with grievances were vested exclusively in the collective agent, that consequence may be admitted. But it cannot outweigh the considerations of equal or greater force which we think Congress has taken into account in preserving the individual workman's right to have a voice amounting to more than mere protest in the settlement of claims arising out of his employment.

From the fact that the Brotherhood occupied the position of collective bargaining agent and as such had power to deal for the future, therefore, petitioner was not entitled to make any assumption concerning its authority to settle the claims accrued for the past or to represent the claimants exclusively in proceedings before the Board. Accordingly for the union to act in their behalf with conclusive effect, authorization by them over and above any authority given by the statute was essential.

III.

Petitioner urges that, apart from the statute, the facts of record show as a matter of law that respondents authorized the Brotherhood to settle the claims, to submit them to the Board, and

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of pay, rules, or working conditions,'' which were committed exclusively to the collective agent's authority. One important difference preserved the aggrieved employee's rights to participate in all stages of the settlement. Congress therefore, when it preserved those rights, contemplated something more than collective representation and action to make the settlement effective for the past. It follows that the individual employee's rights cannot be nullified merely by agreement between the carrier and the union. They are statutory rights, which he may exercise independently or authorize the union to exercise in his behalf.

to represent them in its proceedings. Respondents deny that authority in any of these respects was given, either by individual authorization or by virtue of the Brotherhood's constitution and rules; and they insist that the record presents these questions as issues of fact.

Stripped of its statutory influences, petitioner's argument comes in substance to this. It is undisputed that from August 27, 1934, to November 23, 1936, when the complaint in Docket No. 3537 was filed, respondents made out time slips and filed many complaints with the carrier's local officials through local officers of the Brotherhood on account of departures from the schedule of Article 6. The question of the Article's applicability was a matter of discussion between the Brotherhood and company officials from the time of the transfer in 1934. Respondents admit having authorized the Brotherhood, at a meeting of their local lodge, to file the complaint in Docket No. 3537 and that this complaint was filed in full compliance with the Brotherhood's constitution and rules. The settlement of October, 1938, and the consequent withdrawal of the claim in Docket No. 3537 were made by the same official, Williams, whom respondents had authorized to file the claim and with whom, in effect, both the collective agreement and the Brotherhood's regulations required petitioner to deal concerning the matter.[40] Moreover, the complaint in Docket No. 7324, filed in May, 1939, was filed by Williams and in the same manner as the complaint in Docket No. 3537.

From these facts petitioner concludes that respondents authorized the Brotherhood to settle the claims and to represent them before the Board. In its view, all of these transactions related to the

[40] The collective agreement, of which Article 6 is a part, provides: "Any controversy arising *as to the application* of the rules, herein agreed upon . . . . shall be taken up . . . . " by the general grievance committee with the general superintendent of the carrier, "and in the event of their failure to agree upon a satisfactory settlement, the Committee may appeal to the Vice President." (Emphasis added.) Petitioner says this provision bound it to deal only with the general committee.

Petitioner also relies upon Rule 10 of the Brotherhood's constitution and general rules as imposing the same duty:

"Whatever action may be taken by the General Grievance Committee or Board of Adjustment of any system within the meaning of the above General Rules shall be law to the Lodges on that road until and unless reversed by the Board of Appeals, and if any member refuses to vote or abide by the action of such General Grievance Committee or Board of Adjustment, he shall be expelled from the Brotherhood for violation of obligation."

See also note 8.

same subject matter, namely, whether Article 6 was applicable in the Whiting yard, the only difference being that the relief sought in the two proceedings was not the same; and that difference is not material.

Respondents differ concerning the effect of these facts and others they set forth. They allege that under the Brotherhood's constitution and rules neither Williams and Johnson nor the general grievance committee could "revise or change a general wage 'schedule' or agreement concerning rates of pay, nor working conditions, unless authorized to do so by a majority vote of the lodges, or by a majority vote of the membership in the system"; that claims of individual members for back compensation could not be released without specific authority given individually; that no such authority was given; and that the carrier had knowledge of these limitations. They further allege that Williams and Johnson failed to notify them of the settlement, as the by-laws required;[41] and deny that they knew of the settlement, the proceedings in Docket 7324 or the award until after the award was made, when they promptly repudiated it.[42] They say accordingly that Williams acted without authority from them directly or through the Brotherhood's regulations in submitting and presenting the claims; and that the award is invalid not only for this reason but also because no notice of the proceeding was given to them.

It is apparent that the parties are at odds upon the inferences to be drawn from the facts and their legal effects rather than upon the facts themselves. Respondents deny, and petitioner apparently does not claim, that they at any time individually and specifically authorized the Brotherhood or its officials to compromise their claims for money due or to act for them exclusively in Board proceedings concerning those claims. If there is an issue in this respect it is obviously one of fact concerning which evidence and findings would be required.

The real issues, as we view the record, come down to whether respondents assented, in legal effect, to the final settlement of their

[41] This, they say, was because Williams did not regard the agreement as waiving the money claims, since he did not give them the required notice and shortly after the settlement filed the money claims with the Board. Cf. note 6.

[42] Respondents also attack the settlement because it was not signed by the third member of the grievance committee, the local grievance chairman. This objection borders on the frivolous.

claims by the union or to exclusive representation by it in any of the following ways: (1) by making complaints through local union officials; (2) by authorizing the Brotherhood to submit the complaint in Docket No. 3537; (3) by virtue of the Brotherhood's regulations; (4) by virtue of the collective agreement.

The collective agreement could not be effective to deprive the employees of their individual rights. Otherwise those rights would be brought within the collective bargaining power by a mere exercise of that power, contrary to the purport and effect of the Act as excepting them from its scope and reserving them to the individuals aggrieved. In view of that reservation the Act clearly does not contemplate that the rights saved may be nullified merely by agreement between the carrier and the union.

Nor can we say as a matter of law that the mere making of complaints through local Brotherhood officials amounted to final authorization to the union to settle the claims or represent the employees before the Board. Neither the statute nor the union's regulations purported to give these effects to that conduct. The time slips apparently were filed by the employees themselves. The record shows only the general fact that complaints concerning departures were made through local officials. More than this would be required to disclose unequivocal intention to surrender the individual's right to participate in the settlement and to give the union final voice in making it together with exclusive power to represent him before the Board. The making of complaints in this manner was only preliminary to negotiation and equivocal at the most.

Nor can we say, in the present state of the record, that the union's regulations unequivocally authorized the general grievance committee or its chairman either to settle the claims or to act as exclusive representative before the Board. The parties rely upon apparently conflicting provisions, or, if they are not actually in conflict, then upon different ones, the applicability of some of which is in dispute. Thus respondents rely upon Rule 3, which forbids change in existing agreements without the required vote of local lodges or system membership, and petitioner says the rule is not applicable to the dispute in this case. Whether or not the rule is applicable is a question of fact to be determined in the light of whatever evidence may be presented to sustain the one view or the other. Conceivably it may be intended to apply

only where no grievance is involved or to the settlement of grievances and other disputes as well. But we cannot say, in the absence of further light than is now available, that on its face the rule bears only the one construction or the other.

Similar difficulties arise in connection with the other regulations. Only some of them are set forth in the printed record, although the full constitution and rules were made a part of the record proper by petitioner. The rules and regulations do not purport to require members to negotiate and settle their grievances only through the union. The general committee can act only when a grievance is referred to it by a local lodge. The rules are extensive, parts of them appear to involve possible conflict, the parties differ concerning their effects, and the mode of their operation quite obviously may be largely affected by the manner in which they are applied in practice. Their construction and legal effect are matters of some complexity and should not be undertaken in a vacuum apart from the facts relating to their application in practice. Because both factual and legal inferences would be involved in determining the effects of the regulations to bring about a surrender of the individual rights to take part in the settlement and in the Board's proceedings, those effects cannot be determined as a matter of law in the first instance here.

Nor can we say as a matter of law that authorizing the submission in Docket No. 3537, without more, constituted authorization either to make the agreement of settlement or to represent the employees in Docket No. 7324. The matter requires some explication in the light of the view we have taken concerning the rights of an aggrieved employee in the settlement of grievances. In that view no valid settlement can be made unless he agrees. If settlement by agreement after negotiation fails, he has the right to submit the dispute to the Board for decision. If it is submitted he has rights of notice, hearing and individual representation according to his choice.

All these rights are separate and distinct, though closely related. A surrender or delegation of one would not result in surrender of the others as a matter of law or necessarily as a matter of fact. Whether in particular circumstances it might do so would depend upon whether they were considered sufficient to disclose such an intent.[43] It follows that authority to concur in an agree-

[43] In other words, the aggrieved employee has the right to delegate his power to concur in an agreement of settlement, but at the same time to

ment of settlement does not imply without more, authority to represent the employee in Board proceedings, or the latter the former. This is true when the authority is given to the collective agent as it is when it is given to another. That circumstance is not controlling. It only bears as one factor in the total situation. Accordingly in this case the mere fact that the respondents authorized the union to make the submission and to represent them in Docket No. 3537 did not imply authority to make the settlement agreement or to represent them in the quite different later proceedings in Docket No. 7324.

The record does not show conclusively that prior to the submission in Docket No. 3537 the employees had finally committed the whole matter of their claims into the union's hands in such a manner as to constitute a surrender of their individual rights to concur in any agreement of settlement. That conclusion is not justified merely from the fact that the union participated in negotiations with the carrier.

Moreover, the authorization to act in Docket No. 3537, obviously was given after efforts to secure settlement by negotiation and agreement were considered to have failed. Only then was anyone entitled to make the submission. Accordingly that authorization was entirely consistent with the idea that no further negotiations would be had, and therefore, without more, also with the idea that no authority to negotiate further was implied. It may be that upon a full hearing concerning the course and scope of the negotiations prior to this submission, the evidence will justify a conclusion that the respondents had authorized the union to act finally for them. But the record in its present state does not justify that conclusion as a matter of law.[44]

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reserve his rights to make submission to the Board and of appearance and representation before it, or conversely to reserve his right to concur and delegate the rights of submission and representation. To what extent he may delegate one or all depends therefore upon the intent with which he makes the particular delegation as disclosed by the circumstances in which it is made, or gives evidence of such intent by his conduct, and this will be a question of fact unless the circumstances so clearly show he intended to make the delegation claimed that no other conclusion is possible.

[44] It is true that respondents' position concerning the consequences of their authorization to make the submission in Docket No. 3537 is not altogether consistent. For in claiming that they authorized submission only to determine the applicability of Article 6 for the future, and not to determine the question of retroactivity so as to establish or conclude adversely the basis for their individual monetary claims, they appear to ignore, as does petitioner in some of its contentions, the distinction between collective bargaining

It may be true also that if Docket No. 3537 had been carried to decision the award would have been effective to determine the rights of the parties. But no award was made in that proceeding. It was terminated and the claim was withdrawn. Whether or not that action or other events occurring later were effective to terminate the authority given to submit for the Board's determination the issue which was the foundation of respondents' monetary claims or whether that authority continued in spite of the changed conditions are questions also to be determined from a factual evaluation of the entire situation, essentially preliminary to determination of legal effects, which we cannot make.

Since upon the total situation we cannot say as a matter of law that respondents had authorized the Brotherhood to act for them in Docket No. 7324, whether in submitting the cause or in representing them before the Board; since it is conceded also that they were not given notice of the proceedings otherwise than as the union had knowledge of them; and since further they have denied that they had knowledge of the proceedings and of the award until after it was entered, the question whether the award was effective in any manner to affect their rights must be determined in the further proceedings which are required. The crucial issue in this respect, of course, will be initially whether respondents had authorized the Brotherhood in any legally sufficient manner to represent them, individually, in the Board's proceedings in Docket No. 7324.

Until that question is determined, it is not necessary for us to pass upon the important issue concerning the finality and conclusive effect of the award, or to determine the validity and legal effect of the compromise agreement. We accordingly express no opinion concerning those issues.

The judgment is affirmed. The cause is remanded for further proceedings in conformity with this opinion.

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and the settlement of grievances as the Act defines them. Cf. note 39 and text. If their purpose was merely to authorize settlement for the future, without retroactive effects, the submission to the Adjustment Board was misconceived, since it has no power to render a decision requiring the carrier or the union to make a new agreement. Its only authority, under the Act, is to determine what they have agreed upon previously or, outside the scope of a collective agreement, what rights the carrier and its employees may have acquired by virtue of other incidents of the employment relation. Such an issue by its very nature looks to the past, though it may also seek compliance for the future.

SUPREME COURT OF THE UNITED STATES.

No. 160.—October Term, 1944.

Elgin, Joliet and Eastern Railway Company, Petitioner, *vs.* G. W. Burley, et al.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[June 11, 1945.]

Mr. Justice Frankfurter, dissenting.

On July 27, 1934, the Brotherhood of Railroad Trainmen made an agreement with petitioner, Elgin, Joliet and Eastern Railway Company, affecting its yardmen whereby the starting time for switching crews was fixed. The respondents are employed as switching crews in the Whiting, Indiana yard of petitioner. They are all members of the Brotherhood. Observance by petitioner of this yard agreement was called into question. After abortive conferences for the adjustment of these claims between officials of petitioner and of the Brotherhood, C. H. Williams, General Chairman of the Brotherhood General Grievance Committee, filed a complaint covering several grievances with the National Railroad Adjustment Board, created by the Railway Labor Act of 1934, 48 Stat. 1185, 45 U. S. C. § 151 *et seq.*, to compel petitioner's compliance with the agreed time. In November, 1936, the cases were duly docketed. Before they came to be heard, petitioner, on October 28, 1938, proposed settlement of numerous claims against it by the Brotherhood then pending before the Adjustment Board. Among these claims was the dispute as to starting time. Petitioner agreed for a ninety-day trial period, beginning November 15, 1938, to abide by the time fixed in the 1934 agreement. But its offer was conditioned "on a complete settlement and withdrawal of all cases now pending either before the board, or under discussion with this office . . . and it is further understood that in the event these settlements are accepted that the claims listed in this letter cover all claims of a similar nature, and that no other claims covering the same or like situations will be presented when such claims arise from causes occurring prior to the date of this settlement." On October 31, 1938, settlement

on these terms was accepted for the yardmen by Williams, General Chairman, and S. F. Johnson, the Secretary of the Brotherhood's General Grievance Committee. On the same day and upon request of the Brotherhood and Railway, the cases were removed from its docket by the Adjustment Board.

Later the Brotherhood filed with the Adjustment Board a second complaint claiming money damages on behalf of its members for violation of the 1934 agreement. The Board, by formal award, denied the claim on the ground that the "evidence shows that the parties to the agreement disposed of the claim here made by the letter of carrier dated October 28th, 1938, accepted by employees October 31, 1938."

Respondents then filed this suit in the District Court for damages. Petitioner invoked the 1938 settlement and the Board's award thereon as a bar, and moved for summary judgment. Respondents resisted this motion by denying the authority of the Brotherhood officials to present their claims to the Board or to agree to the settlement. The District Court gave summary judgment for the petitioner which was reversed by the Circuit Court of Appeals for the Seventh Circuit on the ground that the question of authority of the Brotherhood officials raised an issue of fact for trial by the District Court. 140 F. 2d 488. The correctness of this ruling is the important question now before us. 323 U. S. 690.

We have had recent occasion to consider the Railway Labor Act in other aspects. *Switchmen's Union* v. *Board*, 320 U. S. 297; *General Committee* v. *M.-K.-T. R. Co.*, 320 U. S. 323; *General Committee* v. *Sou. Pac. Co.*, 320 U. S. 338. The complexities which the problems in those cases laid bare, make clear that the specific question immediately before us cannot be isolated from the scheme and structure of the Railway Labor Act as an entirety. The Act in turn cannot be appreciated apart from the environment out of which it came and the purposes which it was designed to serve.

From the point of view of industrial relations our railroads are largely a thing apart. The nature and history of the industry, the experience with unionization of the roads, the concentration of authority on both sides of the industry in negotiating collective agreements, the intimacy of relationship between the leaders of the two parties shaped by a long course of national, or at least regional, negotiations, the intricate technical aspects of these agree-

ments and the specialized knowledge for which their interpretation and application call, the practical interdependence of seemingly separate collective agreements—these and similar considerations admonish against mutilating the comprehensive and complicated system governing railroad industrial relations by episodic utilization of inapposite judicial remedies.

The Railway Labor Act of 1934 is primarily an instrument of government. As such, the view that is held of the particular world for which the Act was designed will largely guide the direction of judicial interpretation of the Act. The railroad world for which the Railway Labor Act was designed has thus been summarized by one of the most discerning students of railroad labor relations: "The railroad world is like a state within a state. Its population of some three million, if we include the families of workers, has its own customs and its own vocabulary, and lives according to rules of its own making. . . . This state within a state has enjoyed a high degree of internal peace for two generations; despite the divergent interests of its component parts, the reign of law has been firmly established." Garrison, The Railroad Adjustment Board: A Unique Administrative Agency (1937) 46 Yale L. J. 567, 568-69.

The Railway Labor Act of 1934 is an expression of that "reign of law" and provides the means for maintaining it. Nearly half a century of experimental legislation lies behind the Act. It is fair to say that every stage in the evolution of this railroad labor code was progressively infused with the purpose of securing self-adjustment between the effectively organized railroads and the equally effective railroad unions and, to that end, of establishing facilities for such self-adjustment by the railroad community of its own industrial controversies. These were certainly not expected to be solved by ill-adapted judicial interferences, escape from which was indeed one of the driving motives in establishing specialized machinery of mediation and arbitration. Government intervention of any kind was contemplated only as a last resort for the avoidance of calamitous strikes.

The landmarks in this history, tersely summarized, are the meager act of October 1, 1888, 25 Stat. 501, providing for voluntary arbitration; the Erdman Act of June 1, 1898, 30 Stat. 424, securing government mediation and arbitration, but applicable only to those actually engaged in train service operations; the New

lands Act of July 15, 1913, 38 Stat. 103, providing for a permanent board of mediation and also a board of arbitration; the Adamson Act of September 3, 1916, 39 Stat. 721, as to which see *Wilson* v. *New*, 243 U. S. 332; Order No. 8 of February 21, 1918, formulating the labor policy of the Government after the United States took over the railroads, see Hines, War History of American Railroads (1928) p. 155 *et seq.*; the more elaborate machinery established by Title III of the Transportation Act of 1920, 41 Stat. 456, 469, for adjustments of these controversies, which in its turn was repealed and replaced by the Railway Labor Act of May 20, 1926, 44 Stat. 577, legislation agreed upon between the railroads and the Brotherhoods and probably unique in having been frankly accepted as such by the President and Congress.[1] The actual operation of this legislation partly disappointed the hopes of its sponsors, and led, for the still greater promotion of self-government by the railroad industry, to the Act of 1934.

The assumption as well as the aim of that Act is a process of permanent conference and negotiation between the carriers on the one hand and the employees through their unions on the other. Section 2, First, provides "It shall be the duty of all carriers . . . and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise . . ." Section 2, Second, provides "All disputes between a carrier . . . and its . . . employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier . . . and by the employees thereof interested in the dispute." According to § 2, Sixth, "In case of a dispute . . . arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier . . . and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall

[1] In his message of December 8, 1925, to Congress, President Coolidge stated: "I am informed that the railroad managers and their employees have reached a substantial agreement as to what legislation is necessary to regulate and improve their relationship. Whenever they bring forward such proposals, which seem sufficient also to protect the interests of the public, they should be enacted into law." 67 Cong. Rec. 463.

be held . . .". Section 3, First (i) directs that disputes growing out of grievances or the interpretation or application of agreements concerning rates of pay, rules, or working conditions be handled by conference and negotiation, including resort if necessary to the chief operating officer of the carrier. Compliance with these statutory duties is a prerequisite to appeal to the National Railroad Adjustment Board. The purpose of this legislation is the exertion of maximum pressure toward amicable settlement between the parties. Resort to the Adjustment Board is the last step in the statutory process.

In the controversy before us an amicable adjustment between the parties—the goal of the legislation—had been achieved by pursuing the course which the Act of 1934 directed. We are now asked to nullify this settlement, arrived at after prolonged negotiations, and to open the door of litigation to new discords. Not only is it sought to revive the dispute and to restore it to the status it had before the Adjustment Board more than eight years ago. The respondents claim that after all these years they have a right to repudiate their bargaining agents and to try the authority of these agents as though this were a conventional lawsuit involving the responsibility of a principal for the conduct of his agent.

As members of their Brotherhood, respondents were of course familiar with the procedure whereby the union speaks for them both to the Railroad and before the Adjustment Board. The Brotherhood's "Constitution and General Rules", which the respondents made part of their case below, are clear about this: Rule No. 7 declares that, after a grievance has been transmitted to a General Grievance Committee, that Committee "shall have power to alter, amend, add to or strike out . . . any part or all of any complaint or claim submitted to the committee, subject to appeal to the entire General Committee and/or Board of Appeals. A general grievance Committee may authorize their chairman to handle all grievances received from local lodges with the management for settlement . . .". Respondents cannot deny that the Brotherhood officials had authority to seek compliance by the railroad with the starting time agreement through the Adjustment Board. In view of the sweeping power of the General Grievance Committee to settle grievances, the settlement that was made on behalf of the Brotherhood is invulnerable. The attack on the settlement because it was signed by only two of the three members

of the Committee is frivolous. Such procedure is not at all unusual. Williams and Johnson settled other grievances in like manner, many of them involving claims for money. The Brotherhood's own rules sanction such action in that the Committee may authorize the Chairman to handle all grievances.

This is not a simple little case about an agent's authority. Demands of the employees' representative imply not only authority from those for whom he speaks but the duty of respect from those to whom he speaks. The carrier is under a legal duty to treat with the union's representative for the purposes of the Railway Labor Act. Section 2, Ninth; see *Virginian Ry.* v. *Federation*, 300 U. S. 515. We do not have the ordinary case where a third person dealing with an ostensible agent must at his peril ascertain the agent's authority. In such a situation a person may protect himself by refusing to deal. Here petitioner has a duty to deal. If petitioner refuses to deal with the officials of the employees' union by challenging their authority, it does so under pain of penalty. If it deals with them on the reasonable belief that the grievance officials of the Brotherhood are acting in accordance with customary union procedure, settlements thus made ought not to be at the hazard of being jettisoned by future litigation. To allow such settlements to be thus set aside is to obstruct the smooth working of the Act. It undermines the confidence so indispensable to adjustment by negotiation, which is the vital object of the Act. See *Division 525, Order of Ry. Conductors of America* v. *Gorman*, 133 F. 2d 273, 278.

But respondents claim that irrespective of the authority of the Brotherhood officials to handle claims for the enforcement of the agreed starting time, Williams did not have authority to present to the Adjustment Board the claim for damages due to respondents for petitioner's alleged past violation of the starting-time agreement. They insist that there is no relation between a claim for money resulting from the violation of a collective agreement and a claim for the enforcement of a collective agreement. But surely this is to sever that which is organic. It wholly disregards the nature of such a collective agreement, its implications and its ramifications. In passing on the claim for money damages arising out of the yard agreement, any tribunal would have to examine, interpret and apply the collective agreement precisely as it would if the issue were the duty to observe the agreement in the future.

An award based on the application of the collective agreement would, quite apart from technical questions of *res judicata*, affect future claims governed by the same collective agreement whatever the particular forms in which the claims may be cast. To find here merely an isolated, narrow question of law as to past liability is to disregard the ties which bind the money controversy to its railroad environment. Such a view is blind to the fact that "all members of the class or craft to which an aggrieved employee belongs have a real and legitimate interest in the dispute. Each of them, at some later time, may be involved in a similar dispute." 40 Ops. Atty. Gen., No. 59 (Dec. 29, 1942) pp. 4-5. Indeed, such a view leaves out of consideration not only the significant bearing of the construction of the same collective agreement on parts of the carrier's lines not immediately before the Court. It overlooks the relation of a provision in a collective agreement with one railroad to comparable provisions of collective agreements with other roads.

To allow the issue of authorization after an award by the Board to be relitigated in the courts is inimical to the internal government of the Brotherhood. Union membership generates complicated relations. Policy counsels against judicial intrusion upon these relations. If resort to courts is at all available, it certainly should not disregard and displace the arrangements which the members of the organization voluntarily establish for their reciprocal interests and by which they bound themselves to be governed. The rights and duties of membership are governed by the rules of the Brotherhood. Rule 10 concerns objections to official action: "Whatever action may be taken by the general grievance committee . . . shall be law to the lodges on that road until the next meeting of the board of appeals, and if any member refuses to vote or abide by the action of such general grievance committee or board of adjustment he shall be expelled from the Brotherhood for violation of obligation". To ask courts to adjudicate the meaning of the Brotherhood rules and customs without preliminary resort to remedial proceedings within the Brotherhood is to encourage influences of disruption within the union instead of fostering these unions as stabilizing forces. Rules of fraternal organizations, with all the customs and assumptions that give them life, cannot be treated as though they were ordinary legal documents of settled meaning. "Freedom of litigation, for instance, is hardly so essential a part of the democratic process that the courts should be

asked to strike down all hindrances to its pursuit. The courts are as wise, to take an example of this, in adhering to the general requirement that all available remedies within the union be exhausted before redress is sought before them as they are unwise in many of the exceptions they have grafted upon this rule." Witmer, Civil Liberties and the Trade Union (1941) 50 Yale L. J. 621, 630. To an increasing extent, courts require dissidents within a union to seek interpretation of the organization's rules and to seek redress for grievances arising out of them before appropriate union tribunals. Compare *Norfolk & W. Ry. Co.* v. *Harris*, 260 Ky. 132; *Agrippino* v. *Perrotti*, 270 Mass. 55; *Snay* v. *Lovely*, 276 Mass. 159; *Webb* v. *Chicago, R. I. & G. Ry. Co.*, 136 S. W. 2d 245. The Railway Labor Act, as the product of long experience, is a complicated but carefully devised scheme for adjusting the relations between the two powerful groups constituting the railroad industry. It misconceives the legislation and mutilates its provisions to read into it common law notions for the settlement of private rights. If, when a dispute arises over the meaning of a collective agreement, the legally designated railroad bargaining unit cannot negotiate with the carrier without first obtaining the specific authorization of every individual member of the union who may be financially involved in the dispute, it not only weakens the union by encouraging divisive elements. It grately handicaps the union in its power to bargain responsibly. That is not all. Not to allow the duly elected officers of an accredited union to speak for its membership in accordance with the terms of the internal government of the union and to permit any member of the union to pursue his own interest under a collective agreement undermines the very conception of a collective agreement. It reintroduces the destructive individualism in the relations between the railroads and their workers which it was the very purpose of the Railway Labor Act to eliminate. To allow every individual worker to base individual claims on his private notions of the scope and meaning of a collective agreement intended to lay down uniform standards for all those covered by the collective agreement, is to permit juries and courts to make varying findings and give varying constructions to an agreement inevitably couched in words or phrases reflecting the habits, usage and understanding of the railroad industry. Thus will be introduced those dislocating

differentiations for workers in the same craft which have always been among the most fertile provocations to friction, strife, and strike in the railroad world. The Railway Labor Act, one had supposed, would be construed so as to reduce and not to multiply these seeds of strife.

In order to avoid mischievous opportunities for the assertion of individual claims by shippers as against the common interest of uniformity in construing railroad tariffs, this Court so construed the Interstate Commerce Act in the famous *Abilene Cotton Oil* case, 204 U. S. 426, as to withdraw from the shipper the historic common law right to sue for an overcharge in the courts. It required resort to the Interstate Commerce Commission because not to do so would result in the impairment of the general purpose of that Act. It did so because even though theoretically this Court could ultimately review such adjudications imbedded in the various judicial judgments—if a shipper could go to a court in the first instance—there would be considerations of fact which this Court could not possibly disentangle so as to secure the necessary uniformity. The beneficent rule in the *Abilene Cotton Oil* case was evolved by reading the Interstate Commerce Act not as though it were a collection of abstract words, but by treating it as an instrument of government growing out of long experience with certain evils and addressed to their correction. Chief Justice White's opinion in that case was characterized by his successor, Chief Justice Taft, as a "conspicuous instance of his unusual and remarkable power and facility in statesmanlike interpretation of statute law." 257 U. S. xxv. The provisions of the Railway Labor Act do not even necessitate such a creative act of adjudication as this Court in the *Abilene* case unanimously accomplished. The Railway Labor Act contains no embarrassing specific provision, as was true of § 22 of the Interstate Commerce Act, 24 Stat. 379, 387, calling for subordination to the main purpose of the legislation. The considerations making for harmonious adjustment of railroad industrial relations through the machinery designed by Congress in the Railway Labor Act are disregarded by allowing that machinery to be by-passed and by introducing dislocating differentiations through individual resort to the courts in the application of a collective agreement.

Since the claim before the Adjustment Board was for money, there remains the question whether its disposition was open to ju-

dicial review. The Railway Labor Act commands that the Board's "awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award." Section 3, First (m). But the determination here in controversy does not "contain a money award" so as to be excepted from the final and binding effect given other awards. The obvious meaning of "money award" is an award directing the payment of money, not one denying payment. See *Berryman* v. *Pullman Co.*, 48 F. Supp. 542. We are pointed to no aids to construction that should withhold us from giving the familiar term "money award" any other than its ordinary meaning as something that awards money. This construction is confirmed by comparison with the provisions of the Interstate Commerce Act dealing with reparation orders. Since both Acts came out of the same Congressional Committees one finds, naturally enough, that the provisions for enforcement and review of the Adjustment Board's awards were based on those for reparation orders by the Interstate Commerce Commission. Compare Railway Labor Act, § 3, First (p) with Interstate Commerce Act, as amended by § 5 of the Hepburn Act, 34 Stat. 584, 590; 49 U. S. C. § 16(1), (2). If a carrier fails to comply with a reparation order, as is true of non-compliance with an Adjustment Board award, the complainant may sue in court for enforcement; the Commission's order and findings and evidence then become *prima facie* evidence of the facts stated. But a denial of a money claim by the Interstate Commerce Commission bars the door to redress in the courts. *Baltimore & Ohio R. Co.* v. *Brady*, 288 U. S. 448; *I. C. C.* v. *United States*, 289 U. S. 385, 388; *Terminal Warehouse* v. *Penn. R. Co.*, 297 U. S. 500, 507.

The Railway Labor Act precludes review of the Board's award; and, since authorization of the Brotherhood officials to make the settlement is not now open to judicial inquiry, the judgment calls for reversal.

The CHIEF JUSTICE, Mr. Justice ROBERTS and Mr. Justice JACKSON join in this dissent.